

UNITED STATES GOVERNMENT
National Labor Relations Board
Memorandum

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**San Diego Gas and Electric and International
Brotherhood of Electrical Workers, Local
Union 465, AFL-CIO, Petitioner. Case 21-RC-
19862**

July 23, 1998

CORRECTION

On July 21, 1998, the National Labor Relations Board issued an Order in the above-entitled proceeding in which inadvertent errors appear. In the caption on page 1, the Union, "United Food and Commercial Workers Union, Local 1445, AFL-CIO" should read "International Brotherhood of Electrical Workers, Local Union 465, AFL-CIO"; the type of case is not an "ORDER" it should read "DECISION ON REVIEW AND ORDER"; in the first paragraph of the decision on page 1, "December 17, 1997" should read "December 3, 1997"; and on page 11, footnote 11, "even-handled" should read "even-handed"; and "date" should read "data." Substitute the attached pages 1,2, and 11 for for those previously issued.

Dated, Washington, D.C. July 23, 1998

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

San Diego Gas and Electric and International Brotherhood of Electrical Workers, Local Union 465, AFL-CIO, Petitioner. Case 21-RC-19862

July 21, 1998

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX,
LIEBMAN, HURTGEN, AND BRAME

On December 3, 1997, the Acting Regional Director for Region 21 issued a Decision and Direction of Election, in which he directed that an election be conducted among the employees in the unit found appropriate.¹ No party filed a Request for Review from the Regional Director's Decision and Direction of Election. On December 9, 1997, the Region notified the parties that it was considering conducting the election by mail ballot, and invited the parties to submit position statements concerning the appropriateness of a mail ballot election. The Employer submitted a position statement opposing a mail ballot, requesting that the election be held at two of the Employer's sites, and offering to provide transportation as needed or requested. The Petitioner filed a position statement stating its preference for a mail ballot rather than a manual ballot. On December 18, 1997, the Acting Regional Director informed the parties that the election would be conducted by mail ballot, because the 20 unit employees work at 8 different locations spread across an area of over 80 miles.

On December 24, 1997, the Employer, pursuant to Section 102.67(c)(1) and (2) of the Board's Rules and Regulations, filed a Request for Review of Regional Director's Decision to Conduct Election by Mail Ballot. The ballots for the election were mailed on January 5, 1998, and the election has been conducted and the ballots have been impounded pending the Board's ruling on the Employer's request for review.

The Employer contends that the Acting Regional Director's decision to hold a mail ballot election is con-

trary to the Board's rules, citing to the NLRB Casehandling Manual (Part Two), Representation Procedures (Casehandling Manual), Section 11336, which states that "the use of mail balloting, at least in situations where any party is not agreeable to the use of mail ballots, should be limited to those circumstances that clearly indicate the infeasibility of a manual election." The Employer contends that infeasibility of a manual election has not been shown, based on factors set forth in Section 11336 of the Casehandling Manual, because the parties have stipulated that "the employees in question all 'work a set schedule' at essentially the same time each day."

Having duly considered the matter, the Board has decided to grant the Employer's request for review, and, on the merits, to affirm the Acting Regional Director's decision to hold the election in this case by mail ballot.

I. FACTUAL BACKGROUND

The Employer is a utility providing gas and electrical services in San Diego and Orange Counties, California. The unit which the Petitioner is seeking to represent consists of some 20 dispatchers who work at 8 locations in southwest California.²

On December 9, 1997, the Region notified the parties by letter that it was considering conducting the election by mail ballot. The letter solicited the views of the parties in this regard and also asked each party to propose "an appropriate logistical sequence (times and places)" to be followed if the election were to be conducted manually.

The Petitioner took the position that a mail ballot election was preferable because the unit employees were scattered over 8 locations 80 miles apart. In response to the Region's request for a manual election alternative, the Petitioner submitted two possible scenarios for a traveling election, under which a Board agent would drive sequentially to each of the eight locations, conducting manual balloting at each.

The Employer responded that a mail ballot was not appropriate and proposed instead that a manual election be held at two locations: its Northeast District office in Escondido and its Century Park facility in San Diego. In its letter to the Regional Director proposing the two-site election, the Employer stated that it would "provide transportation as needed or requested" but otherwise made no proposals as to how and at what times the balloting should be conducted. Neither did it comment on the Petitioner's suggestion that an eight-

¹ The unit found appropriate by the Regional Director is as follows:

All dispatchers, dispatch assistants, and district clerks employed by the Employer in its construction and operation districts, at the following facilities: Mountain Empire District, Pine Valley, California; Eastern District, El Cajon, California; Metro District, 701 33rd Street, San Diego, California; Beach Cities District, 4848 Santa Fe Street, San Diego, California; North Coast District, Carlsbad, California; Northeast District, Escondido, California; Orange County District, San Clemente, California; and the Ramona Satellite Office, Ramona, California; excluding all other employees, clerical employees, professional employees, guards, and supervisors as defined in the Act.

² The eight locations are the Metro District and the Beach Cities District, both located in San Diego; the Eastern District, in El Cajon; the Mountain Empire District, in Pine Valley; the Ramona Satellite Office, in Ramona; the Northeast District, in Escondido; the North Coast District, in Carlsbad; and the Orange County District, in San Clemente.

site traveling election would be the best alternative if a manual election was ordered.

Under the Employer's proposal, 11 employees would vote at the Century Park location: 3 from the Beach Cities office (6 miles away), 4 from the Metro office (10 miles away), 3 from the Eastern office (14 miles away) and 1 from the Mountain Empire office (60 miles away). Of the other nine employees, who would vote at the Northeast District office in Escondido, three work at that location, three would come from the North Coast office (19 miles away), one would come from the Ramona office (20 miles away), and two would come from the Orange County office (49 miles away).

The Petitioner objected to the Employer's proposal, arguing that employees should not be required to travel such distances to vote. The Petitioner noted that there was no justification for requiring employees to vote at the Century Park facility—which it said is the headquarters of the Employer's Labor Relations and Human Resources departments—because none of the unit employees work at that location. The Petitioner also objected to the “perceived advantage” it claimed the Employer would gain by providing employees with transportation to the polling sites.

After hearing from both parties, the Acting Regional Director rejected the Employer's two-site manual election proposal as well as an eight-site traveling election, which no party preferred, and decided to conduct the election by mail ballot.³ Citing Section 11336 of the NLRB Casehandling Manual, which states that the use of mail ballots should be explored where long distances are involved or where eligible voters are scattered, the Acting Director noted that both of those factors are present in this case. A mail ballot election, he stated, could be accomplished with a minimal expenditure of Agency resources and no employee would be expected to travel away from his work station to a central polling site. In contrast, under the Employer's two-site manual election proposal, 17 of the 20 eligible employees would have to travel to vote in the election—one of them more than 120 miles round trip. The Acting Director also noted that none of the employees work at the Century Park location, where the Employer was proposing that 11 employees be required to vote, and that the Employer had not responded to the Region's request that it propose an appropriate logistical sequence for a manual election. He estimated that the other alternative—conducting polling at all eight locations where the employees work—would require 8

hours of a Board agent's time, including 4 hours to travel to each of the sites.

II. DISCUSSION

“Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees.” *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). The Board in turn has delegated to the Regional Directors discretion in determining the arrangements for an election, including the location of the election and whether it should be conducted by manual balloting or mail ballot. *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958).⁴ As the Board stated in *National Van Lines*:

[C]ircumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions. Because of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections shall be conducted. Only where it is affirmatively shown that a Regional Director has clearly abused the discretion afforded him to conduct representative [sic] elections will the Board nullify an election and prescribe other election standards.

A Regional Director's discretion, however, is not unfettered and is to be exercised within certain guidelines. Because of the value of having a Board agent present at the election, the Board's long-standing policy, to which we adhere, has been that representation elections should as a general rule be conducted manually, either at the workplace or at some other appropriate location. The Board has also recognized, however, that there are instances where the Regional Director, because of circumstances that would tend to make it difficult for eligible employees to vote in a manual election, may reasonably conclude that conducting the election by mail ballot, or a combination of mail and manual ballots, would enhance the opportunities for all to vote.

Agency procedures for the conduct of representation elections, including guidelines for use by the Regional

³ The Regional Director first advised the parties that he had decided to conduct the election by mail in a letter dated December 18, 1997. Thereafter, the Employer submitted a request for reconsideration of the decision, to which the Petitioner responded. The Regional Director then reaffirmed his decision in a letter dated December 24, 1997. The reasons for his decision, which we review here, are set forth in those letters.

⁴ Contrary to the suggestion of our dissenting colleagues, the Board employs an abuse of discretion standard in determining whether to overturn the decision of a Regional Director as to whether an election should be conducted manually or by mail. E.g., *Shepard Convention Services*, 314 NLRB 689, 690 (1994), enf. denied on other grounds, 85 F.3d 671 (D.C. Cir. 1996); *London's Farm Dairy*, 323 NLRB No. 186 (June 20, 1997). Thus, whichever party challenges the Regional Director's decision on the manner of conducting the election must show that the Regional Director has abused his or her discretion. The abuse of discretion issue encompasses whether the Regional Director acted within the guidelines that we have outlined in directing a mail ballot election.

the presence of a Board agent and the parties' observers acts as a deterrent to objectionable conduct and, to the extent that objectionable conduct may occur in the polling and adjacent areas, evidence of such conduct is readily available through the observers. In contrast, in a mail ballot election, coercion of employees, particularly if it is successful, is far less likely to become known to the parties and obtaining evidence in support of objectionable conduct is far more difficult.

The concurring opinion further says that we "suggest that unions have the advantage over employers in communicating with employees concerning their views of representation." The concurrence then goes on to contend that this is not so. We do not consider this "mail ballot" case to be the appropriate forum in which to debate which party, if any, has a communication advantage. Our sole point is that a mail ballot does not simply change the method of voting; rather, by extending the *Peerless Plywood* period, a mail ballot imposes a significant limitation on one party's acknowledgeably effective means of communicating with the employees.¹¹

Finally, the concurrence notes our data (*supra*) which show that employee participation rates are higher in manual elections than in mail ballot elections.

tering the historic role of manual ballots) should not be based on such a slender reed. In addition, as the Chairman concedes, our position in favor of mail balloting is not based on favoring one side or the other. We simply wish to assure that Board elections are conducted in such a way as to best protect the Section 7 right to vote freely.

¹¹ Member Brame believes that, given the continued erosion of the once even-handed *Peerless Plywood* rule, the time has come to reexamine *Peerless'* premises in light of current empirical data and to reassess its restrictions on employer free speech in light of First Amendment jurisprudence.

The concurrence contends that the data can be disregarded because mail ballots are used in circumstances where it is inherently difficult to obtain voter participation. He apparently believes that, absent a mail ballot in these cases, the participation rate would have been even lower. However, he cites no data for his thesis. In addition, under his view, a mail ballot can be held solely for budgetary reasons, i.e., when there is no problem of voter participation. We would not sacrifice employee participation for the sole purpose of saving money.

6. Conclusion

The manual election lies at the heart of our system of workplace democracy. It is the cornerstone of this Agency's contribution to the successful workings of that democracy. Because of this, the Agency's historic practice has been to hold manual elections, except in rare circumstances where such elections are not feasible. Those circumstances were not present in *Shepard*, and they are not present here. Therefore, in deference to our values and our traditions, we would hold a manual election here.

Dated, Washington, D.C. July 21, 1998

Peter J. Hurtgen,

Member

J. Robert Brame III,

Member

NATIONAL LABOR RELATIONS BOARD

San Diego Gas and Electric and International Brotherhood of Electrical Workers, Local Union 465, AFL-CIO, Petitioner. Case 21-RC-19862

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II. DISCUSSION

“Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees.” *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). The Board in turn has delegated to the Regional Directors discretion in determining the arrangements for an election, including the location of the election and whether it should be conducted by manual balloting or mail ballot. *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958).⁴ As the Board stated in *National Van Lines*:

[C]ircumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions. Because of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections shall be conducted. Only where it is affirmatively shown that a Regional Director has clearly abused the discretion afforded him to conduct representative [sic] elections will the Board nullify an election and prescribe other election standards.

A Regional Director's discretion, however, is not unfettered and is to be exercised within certain guidelines. Because of the value of having a Board agent present at the election, the Board's long-standing policy, to which we adhere, has been that representation elections should as a general rule be conducted manually, either at the workplace or at some other appropriate location. The Board has also recognized, however, that there are instances where the Regional Director, because of circumstances that would tend to make it difficult for eligible employees to vote in a manual election, may reasonably conclude that conducting the election by mail ballot, or a combination of mail and manual ballots, would enhance the opportunities for all to vote.

Agency procedures for the conduct of representation elections, including guidelines for use by the Regional Director in determining when a mail ballot election is appropriate, are set forth generally in Part Two of the

⁴Contrary to the suggestion of our dissenting colleagues, the Board employs an abuse of discretion standard in determining whether to overturn the decision of a Regional Director as to whether an election should be conducted manually or by mail. E.g., *Shepard Convention Services*, 314 NLRB 689, 690 (1994), enf. denied on other grounds, 85 F.3d 671 (D.C. Cir. 1996); *London's Farm Dairy*, 323 NLRB No. 186 (June 20, 1997). Thus, whichever party challenges the Regional Director's decision on the manner of conducting the election must show that the Regional Director has abused his or her discretion. The abuse of discretion issue encompasses whether the Regional Director acted within the guidelines that we have outlined in directing a mail ballot election.

NLRB Casehandling Manual.⁵ This volume of the Manual has not, however, been revised since 1989, and therefore does not reflect decisions of the Board issued since that date. This has resulted in some confusion as to when it is appropriate to use mail ballots. We therefore take this occasion to set forth the following guidelines clarifying the circumstances under which it is within the Regional Director's discretion to direct the use of mail ballots.⁶

When deciding whether to conduct a mail ballot election or a mixed manual-mail ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are "scattered" because of their job duties over a wide geographic area; (2) where eligible voters are "scattered" in the sense that their work schedules vary significantly, so that they are not present at a common location at common times;⁷ and (3) where there is a

strike, a lockout or picketing in progress. If any of the foregoing situations exist, the Regional Director, in the exercise of discretion, should also consider the desires of all the parties, the likely ability of voters to read and understand mail ballots, the availability of addresses for employees, and finally, what constitutes the efficient use of Board resources, because efficient and economic use of Board agents is reasonably a concern.⁸ We also recognize that there may be other relevant factors that the Regional Director may consider in making this decision, but we emphasize that, in the absence of extraordinary circumstances, we will normally expect the Regional Director to exercise his or her discretion within the guidelines set forth above.

In the strike, lockout, or picketing situation, for example, the Regional Director may, in his or her discretion, order either a mail ballot or a mixed manual-mail ballot election in order to insure that eligible voters are not required to cross a picket line in order to vote,⁹ or because striking and locked-out workers have left the area or taken other temporary employment that makes it difficult for them to get to the election site to cast a manual ballot. Similarly, where a significant number of eligible voters are not scheduled to be at the election site at the times proposed for manual balloting—for such reasons as that they work part-time or on an on-call basis, or have duties that keep them in the field for substantial periods of time—the Regional Director might reasonably conclude that their opportunity to participate in the election would be maximized by utilizing mail or mixed manual-mail ballots.¹⁰

⁵The Casehandling Manual is prepared by the General Counsel for the purpose of providing guidance to Agency employees involved in the handling of cases arising under the Act. As to matters on which the Board has issued rulings, the drafters of the Manual of course seek to accurately reflect Board law. However, the Manual "is not intended to be a compendium of either substantive or procedural law, nor can it be a substitute for a knowledge of the law." Casehandling Manual, Part Two, Purpose of Manual. Moreover, the guidelines in the Manual "are not Board rulings or directives" and "are not intended to be and should not be viewed as binding procedural rules." *Id.*, quoted in *VIP Health Care Services v. NLRB*, 82 F.3d 1122, 1126 (D.C. Cir. 1996). See also, e.g., *Queen Kapiolani Hotel*, 316 NLRB 655 fn. 5 (1995); *NLRB v. Black Bull Carting, Inc.*, 29 F.3d 44 (2d Cir. 1994); *Modern Plastics Corp. v. McCulloch*, 400 F.2d 14 (6th Cir. 1968). Thus, while the Casehandling Manual can be regarded as generally reflecting Board policies, in the event of conflict it is the Board's decisional law, not the Manual, that is controlling.

⁶The Manual should be revised to reflect these guidelines, which reflect a more flexible standard than has sometimes been inferred from the sentence in Sec. 11336 of the current version stating that the use of mail ballots should be limited to circumstances that indicate the "infeasibility" of a manual election. The Board has never construed the "infeasibility" standard so narrowly as to mean that mail ballots may be used only if a manual election is incapable of being accomplished. Rather, as the Board's decisions in this area reflect, and as the Manual provision read as a whole indicates, the use of mail ballots has been considered appropriate in circumstances where a manual election might be possible, but would be impractical, or not easily done. Because, however, the use of the term has clearly contributed to confusion in this area, it should be deleted when the Manual is revised.

⁷Thus, employees may be deemed to be "scattered" where they work in different geographic areas, work in the same areas but travel on the road, work different shifts, or work combinations of full-time and part-time schedules. The "scattered" criteria are intended to apply in any situation where all employees cannot be present at the same place at the same time. See, e.g., *London's Farm Dairy, Inc.*, 323 NLRB No. 186 (June 20, 1997); and *Reynolds Wheels International*, 323 NLRB No. 187 (June 20, 1997).

The mere fact that employees may work multiple shifts, thereby necessitating more than one voting session during the course of the workday, is not in and of itself a sufficient basis for directing a mail ballot election. However, as noted below, the Regional Director may appropriately take into account considerations of economy and effi-

cient use of agency resources where other factors are present that suggest the propriety of using mail ballots. Thus, for example, where the holding of a manual election at times and places convenient for eligible voters would require that voting sessions be conducted at multiple locations and/or over a period of several days, the Regional Director, in exercising his discretion as to whether to use mail ballots, may consider such factors as the burden imposed on Board resources where there is a substantial distance between the workplace and the Regional, Subregional, or Resident Office responsible for conducting the election.

⁸This factor is only to be considered if one or more of the other factors we have outlined above are present. Accordingly, Regional Directors should not order mail ballot elections based solely on budgetary concerns. See *Willamette Industries*, 322 NLRB 856 (1997).

⁹In such a situation, as long as striking employees have not left the area or taken other employment that would interfere with their ability to participate in a manual election, we agree with our dissenting colleagues that holding the election at a neutral site would also be appropriate.

¹⁰Our dissenting colleagues suggest that it would be possible to hold manual elections in some situations where employees work multiple shifts, as well as in some strike or lockout situations. We do not disagree. However, we reject our dissenting colleagues' apparent premise that a mail ballot election should not be held where it would be possible to conduct the election manually. A Regional Director should, and does, have discretion, utilizing the criteria we have outlined, to determine if a mail ballot election would be both

Continued

Contrary to our dissenting colleagues, we do not agree that the holding of mail ballot elections in circumstances that fall within these guidelines will inevitably result in more instances of voter coercion, because a Board agent is not present while the vote is being cast. In fact, mail ballots have been utilized by the Board since the NLRA was enacted—and in recent years in about 2 percent of all elections—and abuses have rarely occurred. Indeed, as the Board has previously noted, there has been only one reported case involving such an abuse in the history of the Act, and in elections conducted under the Railway Labor Act, which are routinely conducted by mail ballot, there have been only three reported cases involving improprieties. See *London's Farm Dairy*, supra, slip op. at 2, and cases cited therein.

Neither do we agree that the statistics regarding turnout at Board-conducted elections cited by the dissent demonstrate that using mail ballots rather than manual ballots reduces voter participation in elections. The Board's experience with representation elections has shown that the voter participation rate is generally higher in elections conducted manually than in mail ballot elections. However, because mail ballot elections have, by design, largely been limited to situations where factors were present which were likely to inhibit voter participation if the election were conducted manually, there is no reason to believe that participation in those particular elections would necessarily have been higher had they been manual elections. See *VIP Health Care Services v. NLRB*, supra at 1126 (expressing doubt whether qualified voters who did not exert the minimal effort required to fill in and return a mail ballot would have been more likely to vote in a manual election where to do so would have required them to make a special trip to the election site during off duty hours).

Finally, we reject the dissent's contention that because, under the rule in *Peerless Plywood Co.*, 107 NLRB 427 (1953), employers are prohibited from giving mass "captive audience" speeches to employees during the period beginning 24 hours before the actual balloting period begins, the use of mail ballots "significantly silences" the employer. We note that during the *Peerless Plywood* period, the employer and its agents remain free to continue to campaign against the union not only through mailings to employees at their homes, but also in the workplace, where they can distribute and post literature, communicate with employees one-on-one, and even continue to conduct mass meetings, as long as the meetings are on the employees' own time and attendance is not mandatory. *Livingston Shirt Corp.*, 106 NLRB 400, 408 (1953).

more efficient and likely to enhance the opportunities for the maximum number of employees to vote.

Like our concurring colleague, we know of no reason to believe that employees are less likely to cast fully reasoned votes in mail ballot elections than in manual elections, or that employees will be insufficiently aware of the importance of the choice they are making absent what the dissenters describe as "the symbolism and the drama which accompanies a manual ballot." Consequently, if pursuant to the guidelines described above, a Regional Director concludes that it is appropriate to conduct all or part of the election by mail, we believe that the Board should defer to that decision.

In directing a mail ballot election in this case, the Acting Regional Director relied on the fact that the unit employees are scattered over a large geographic area, and that adopting the Employer's proposal would have required employees to travel long distances from their work stations in order to vote. We therefore find that he acted within the scope of his discretion, whether under the Casehandling Manual provisions as they are presently worded or under the guidelines we have set forth above. Section 1136 of the Manual explicitly states that "[p]articularly . . . where eligible voters are scattered because of their duties, the possibility [of mail balloting] should be explored." Thus, as the Court of Appeals for the District of Columbia Circuit has noted, the Manual specifically instructs Regional Directors in cases such as this to explore the possibility of mail balloting and to exercise their discretion in determining whether such an election is appropriate. *VIP Health Care Services v. NLRB*, supra at 1126, 1127. On these facts the case also falls within the first of the three circumstances we describe above as ordinarily suggesting the propriety of using mail ballots. We therefore conclude that the Acting Regional Director has acted within the discretion which he has been afforded to determine the method of conducting the election, and thus we affirm his decision to hold the election by mail ballot.

ORDER

IT IS ORDERED that the case is remanded to the Acting Regional Director for Region 21, with directions to open and count the ballots in the mail ballot election, and to take further appropriate action.

CHAIRMAN GOULD, concurring.

I agree with my colleagues' decision to affirm the Acting Regional Director's decision to hold the election in this case by mail ballot. I join in their decision to abandon the "infeasibility" standard set forth in the Casehandling Manual, and provide guidelines in keeping with the Board's decisions in this area. Thus, I agree that a mail ballot is appropriate in those circumstances cited by my colleagues, namely, where eligible voters are scattered because of their job duties

over a wide geographic area; where eligible voters' work schedules vary such that they are not present at a common location at common times; and where there is a strike, a lockout, or picketing in progress.

Unlike my colleagues, however, I would not limit the use of a mail ballot to only these circumstances. I would find the use of mail ballots appropriate in all situations where the prevailing conditions are such that they are necessary to conserve Agency resources and/or enfranchise employees. My colleagues in the majority state that Regional Directors should not direct mail ballot elections based solely on budgetary concerns. For the reasons set forth below, I hold a different view. As discussed below, I also reject the dissent's contentions that an increased use of mail ballots will diminish the integrity of Board elections, decrease employee participation or effectively silence the employer's voice in the election campaign.

In its recent decisions, the Board has encouraged greater use of postal ballots with the overriding objective of expanding franchise so that employees who ordinarily have limited or no opportunity to cast a ballot in a manual election will be able to participate in the election process. Beginning with *Lone Star Northwest, Inc.*, 36-RD-1434 (unpublished), the Board has directed mail ballot elections in situations that did not justify a mail ballot election under the language of the current representation case manual. See also *London's Farm Dairy*, 323 NLRB No. 186 (June 20, 1997), and *Reynolds Wheels International*, 323 NLRB No. 187 (June 20, 1997). In *Lone Star*, the Board granted the union's request for review of a Regional Director's decision not to order a mail or mixed manual-mail ballot for economic strikers and striker replacements. Even though the Board's Casehandling Manual did not provide for a mail ballot under these circumstances, the Board concluded only a mail ballot would enfranchise the voters who were on strike.

As I have previously observed, the provisions of the Board's Casehandling Manual do not constitute "a form of authority binding . . . on the Board." See National Labor Relations Board Casehandling Manual, Purpose of Manual; *London's Farm Dairy*, 323 NLRB No. 186, slip op. at fn. 3. See also *Shepard Convention Services*, 314 NLRB 689 (1994), enf. denied 85 F.3d 671 (D.C. Cir. 1996). Further, as noted by the majority, although the Manual states that "the use of mail balloting, at least in situations where any party is not agreeable to the use of mail ballots should be limited to those circumstances that clearly indicate the infeasibility of a manual election," the Board has never held or construed the Casehandling Manual so narrowly as to require mail ballots only in situations where it would be impossible to conduct a manual ballot election. Since the provisions of the Casehandling Manual cannot supercede or substitute for the provisions of the

Act, for formal decisional precedent, or for the Board's Rules and Regulations, I agree with my colleagues that the "infeasibility" standard relied on by the dissent should be abandoned.

The use of mail ballots in appropriate circumstances will not only expand employee franchise beyond what would be provided in a manual election in the same circumstances,¹ but it will conserve Agency resources in the new period of austerity which we confront. In *London's Farm Dairy*, 323 NLRB No. 186, slip op. at 2, fn.3 (June 20, 1997), and in my concurring opinion in *Williamette Industries*, 322 NLRB 856 (1997), I emphasized the importance of "an unduly burdensome strain" on Agency resources as a factor to be taken into account by a Regional Director in ordering a mail ballot election. Although my colleagues in the majority concede that a Regional Director should consider "what constitutes the efficient use of Board resources, because efficient and economic use of Board agents is reasonably a concern," they also find that it cannot be the sole factor in the decision. I do not understand what so differentiates budgetary concerns from other factors that it leads my colleagues to conclude that budgetary concerns standing alone cannot in any circumstance justify the direction of a mail ballot election. Indeed, in this time of austerity and scarce Agency resources, it is imperative, as the General Counsel stated in his directive, that Regional Directors conserve budget resources wherever and whenever possible in the exercise of their discretion to establish the mechanics of the election process. See Office of the General Counsel Field Memorandum OM 98-7, issued January 30, 1998.

The dissent suggests that voter turnout is always lower in mail ballot elections. However, mail ballots are generally ordered where it is difficult to obtain voter participation with a mail or manual ballot, thus rendering meaningless a direct or raw comparison between voter participation under mail and manual ballots.² I find similarly unpersuasive my dissenting colleagues' contention that coercion is inevitable in the mail balloting procedure. As the Board noted in *London's Farm Dairy*, in the appropriate circumstances, eligible voters have been permitted to cast their ballots by mail since the earliest days of the Act and, in that time, there has been only one reported instance of

¹As the Board pointed out in *London's Farm Dairy*, 323 NLRB No. 186, slip op. at 2, fn. 2 (June 20, 1997), mail ballots are the rule and not the exception under the Railway Labor Act. Indeed, the National Mediation Board (NMB) has conducted all ballots by mail for more than a decade! The instances of illegal behavior are rare, as is true under our Act.

²The participation data for mail ballots cited by the dissent reflects those cases where the employees are difficult to reach. The bulk of the postal ballot cases will continue to fall in this category, notwithstanding the fact that some of them will turn exclusively or primarily on budgetary considerations.

abuse. 323 NLRB No. 186, slip op. at 1–2 (citing *Human Development Assn.*, 314 NLRB 821 (1994)).

The dissent also seems to suggest that unless employees cast their ballots under the supervision of a Board agent, the integrity of the election process will be lost. Again I disagree. The Board rejected a similar assertion in *London's Farm Dairy*, noting that the instructions that accompany the ballot specifically instructs the employee to mark the ballots in secret and directs the employee not to show the ballot to anyone after it is marked. 323 NLRB No. 186, slip op. at 2. Further, as the Board's own experience in conducting manual elections clearly demonstrates, the presence of a Board agent does not guarantee "laboratory conditions." See e.g., *Modern Hard Chrome Service Co.*, 187 NLRB 82 (1970) (election set aside where a single vote was determinative of the election and the conversations of the petitioner's observer, already criticized by the Board agent, "culminated in his gratuitous offer of a loan to a prospective voter."); *International Stamping Co.*, 97 NLRB 921 (1951) (election set aside where during the election, the employer's observer went through the plant with an eligibility list calling out the names of prospective voters and checking off each voter's name as he left to vote); and *Austill Waxed Paper Co.*, 169 NLRB 1109 (1968) (election set aside where ballot box left unattended when an altercation developed outside the polling place during the voting period and drew the officials away).

The Board's purpose in regulating the conduct of elections is to insure that employees cast an uncoerced and well-considered vote. Yet, there is nothing to suggest that employees do not cast a fully reasoned vote in a mail ballot election. My dissenting colleagues invoke the "symbolism and drama which accompanies a manual ballot." In my view, symbolism is present in the mail ballot election by virtue of the language of the ballot and the instructions sent by the Regional Office. Further, the symbolism of a manual election does not enjoy any particular advantage over that in a mail ballot election. Indeed, it has one disadvantage in that it permits employers to attempt to manipulate the symbolism and drama of an in-plant election in order to gain advantage in the election. Thus, based on my experience as a practitioner and an academic in the field of labor law since 1961, and on my many conversations with management attorneys, I note that some employers attempt to direct the Board agent and the procedures surrounding the election in a way that creates the appearance in the eyes of the employees that their employer controls not only their salary and benefits but also the Board's procedures.³

³ The fact that employers resort to this strategy suggests both that it is effective and that it is not always redressed by the objection procedure.

Noting a limitation on the use of the "captive audience speech" technique during a mail ballot election, the dissent states that "a mail ballot significantly silences one of the campaign voices [i.e., the employer] during an essential part of the campaign." This assertion is completely without basis inasmuch as it assumes that the employer's only method of communication is or should be the captive audience. As the majority notes, an employer is free to conduct "captive audience" speeches throughout the campaign period until the *Peerless Plywood*⁴ rule takes effect 24 hours

The dissent contends that I am relying on nonrecord "facts." Congress, however, has entrusted the Board with the "special function of applying the general provisions of the Act to the complexities of industrial life." *NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 236 (1963). And it is precisely because the Board, as Justice Frankfurter aptly stated, is "equipped with its specialized knowledge and cumulative experience" that the Board's determinations are accorded deference by the Courts. *San Diego Bldg. Trades v. Garmon*, 359 U.S. 236, 242 (1959). In the instant case, all I have done is to apply my cumulative experience in the field of labor-management relations.

The attempt by employers to present a particular image of Board procedures to employees, which is designed to influence their voting behavior, is well demonstrated by the following commentary:

The NLRB had designated twenty-six polling places throughout the Ohio Appalachians and Kentucky, and some of the nine board agents were afraid to drive their government cars along the winding, icy roads of those isolated mountain territories. Their concerns left us an entree to make a pass at the NLRB. We told the agents that we would gladly drive them to the polling sites—many of which were out at the pits—in company four-wheel-drive wagons. When the union activists heard about our plan, they were outraged and demanded that a union election observer be allowed to ride alongside the polling agent. We, of course, refused, threatened to take back our offer if union people were ordered along. The NLRB denied the union demand. So on election morning, several polling agents boarded Cravat [the employer] trucks and headed for the polling sites in the company of a Cravat driver. That was one more victory for us: in a union-busting campaign, the relentless accumulation of small victories leads to the final big win. By the time the balloting was underway, I had no doubt that the election was ours.

M.J. Levitt, *Confessions of a Union Buster*, at 31 (New York: Crown Publishers, Inc., 1993).

In citing this commentary, I do not suggest in any way that my dissenting colleagues are motivated by a desire to engage in or assist "union busting." The book, however, highlights techniques by which the Board's manual ballot procedures have been manipulated by sophisticated employers and labor consultants in ways that mail ballots cannot be manipulated. The dissent's reliance upon the employer's communication avenues in connection with manual and mail ballots makes the *Union Buster* commentary relevant. In any event, as I have stated, my primary reliance is upon my own expertise buttressed by numerous conversations with labor lawyers representing management.

⁴ 107 NLRB 427 (1953). Member Brame questions the validity of the *Peerless* rule. See the dissent at slip op. 11, fn. 11. I agree with Board precedent that the *Peerless* rule is properly applied to employers, but I disagree with its application to unions. In my view the interference with a free election condemned in *Peerless* results from the combined effect of the last minute character of the speech and the employer's economic power over its employees and exclusive control of the workplace. I would not apply the *Peerless* rule to a union's last minute campaign speech since the union neither wields

before the ballots are mailed⁵ and, during the actual balloting period, the employer is free to lawfully campaign in the workplace. By decrying the unavailability of the “captive audience” speech, my dissenting colleagues appear to both exalt this right of communication at the time most propitious to the employer over all avenues of communication protected by the Act, and also suggest that unions have the advantage over employers in communicating with employees concerning their views of representation.⁶ Neither view is soundly conceived in terms of the reality of the workplace and the principles of the Act. Through its exclusive control of company time and property,⁷ an employer enjoys virtually complete access to the minds of its employees during working hours. As the Court made clear in *Lechmere v. NLRB*,⁸ employers are not required to permit nonemployee union organizers to enter their property to communicate with employees. The employer also wields considerable economic power over its employees who depend completely on their jobs as their means of livelihood and economic existence. As a result of this economic power, an employer’s statement is imbued with a “force independent of persuasion.”⁹ The union, on the other hand, can only attempt to convince employees that, if selected as their collective-bargaining representative, it will obtain an agreement from the employer that improves wages, benefits, and working conditions.

The dissent also notes that, during the critical period prior to an election, the Board permits unions but not

employers to visit individual employees at their homes to present views on unionization.¹⁰ The Board, however, applies this rule in both manual and mail ballot elections based on the recognition that

there is a substantial difference between the employment of the technique of individual interviews by employers on the one hand and by unions on the other. Unlike employers, unions often do not have the opportunity to address employees in assembled or informal groups, and never have the position of control over tenure of employment and working conditions which imparts the coercive effect to systematic individual interviews conducted by employers. Thus, not only do unions have more need to seek out individual employees to present their views, but, more important, lack the relationship with the employees to interfere with their choice of representatives thereby. *Plant City Welding & Tank Co.*, 119 NLRB 131, 133–134 (1957), rev’d on other grounds, 133 NLRB 1092 (1961).

In my view, for the reasons set forth above, a properly conducted mail ballot election is in many if not all instances the equal of a manual ballot for achieving the Board’s statutory goal of ensuring employees the opportunity to cast their ballots for or against representation under circumstances free not only from interference, restraint, or coercion violative of the Act, but also from other elements that prevent or impede a free and reasoned choice.¹¹ Accordingly, I affirm the Regional Director’s decision to direct a mail ballot election in the instant case.

MEMBERS HURTGEN AND BRAME, dissenting.

1. Introduction

The Board today continues on a path toward greater utilization of mail balloting. This process began in *Shepard Convention Services*, 314 NLRB 688 (1994). Although the Board’s direction of a mail ballot election in that case was reversed by the D.C. Circuit,¹ the Board, undaunted, continued on that path in *London’s Farm Dairy*, 323 NLRB No. 186 (June 20, 1997), and *Reynolds Wheels*, 323 NLRB No. 187 (June 20, 1997). The misdirection continues today.

We believe that this direction is contrary to the finest traditions of the Board, and is fraught with peril. We therefore dissent.

The Board’s policy is set forth in the National Labor Relations Board’s Casehandling Manual:

the employer’s economic power nor possesses the employer’s access to employees.

⁵The concerns expressed by the dissent as they relate to communication opportunities appear to find their basis in this fundamental difference between mail and manual ballots. In a manual ballot election, employers can hold captive audience speeches at a time more proximate to the actual casting of the ballot by the voter. Cf. *Confessions of a Union Buster*, supra at 108:

In an NLRB election, we might have felt somewhat secure. Our plan would have been to keep the warmth and love in focus until the last ballot was counted, then collect our check and walk away. But a Railway Labor Act election is done differently, and it wasn’t going to be easy. Under the railway act, a union election is conducted by mail. Voters have two weeks to mark their ballots and return them to the National Mediation Board.

⁶The dissent argues that this “mail ballot case” is not the appropriate forum for discussing the issue of the relative ability of the parties to communicate with voters. However, it is my dissenting colleagues who rely on what they perceive as an infringement of the employer’s ability to communicate with employees as a basis to object to the increased use of mail ballot elections.

⁷Although *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945), allows workplace solicitation by employees, the non-employee union organizer is for the most part forced to campaign outside company property.

⁸502 U.S. 527 (1992).

⁹*NLRB v. Federbush Co.*, 121 F.2d 954, 957 (2d Cir. 1941). See also *NLRB v. Falk Corp.*, 102 F.2d 383, 389 (7th Cir. 1939) (“The position of the employer . . . carries such weight and influence that his words may be coercive when they should not be so if the relation of master and servant did not exist.”).

¹⁰See *Peoria Plastic Co.*, 117 NLRB 545, 547–548 (1957), and *Orleans Mfg. Co.*, 120 NLRB 630 (1958).

¹¹*Excelsior Underwear Inc.*, 156 NLRB 1236, 1240 (1966).

¹*Shepard Convention Services v. NLRB*, 85 F.3d 671 (D.C. Cir. 1996).

The best place to hold an election, from the standpoint of accessibility to voters, is somewhere on the employer's premises. In the absence of good cause to the contrary, the election should be held there.

In addition, Section 11336 provides in relevant part:

[T]he use of mail balloting, at least in situations where any party is not agreeable to the use of mail ballots, should be limited to those circumstances that clearly indicate the infeasibility of a manual election.

2. Policy considerations

Although the Manual provisions do not have the binding force of law, they nonetheless reflect the Board's historical wisdom of favoring manual elections.² That wisdom has its roots in the fundamental purpose of the Act—to provide for workplace democracy in which employees can select or reject a union as bargaining representative. At bottom, our difference with our colleagues is that we believe that manual elections, as compared to mail ballot elections, are far more likely to achieve that goal. We would therefore generally restrict mail ballot elections to those limited situations mentioned in the Manual.

In view of our difference with our colleagues we believe that it is important that we emphasize the essential role that Manual elections play in the realization of employees' Section 7 rights. These rights are anchored in the opportunity to vote on a collective-bargaining representative, which, in turn, depends upon the following factors: (1) Communicating to the voters the importance of the choice they are about to make; (2) secrecy of the ballot; (3) integrity of the voting process; (4) an absence of coercion on the voter; (5) maximum participation by the electorate; and (6) full opportunity for the voter to hear all points of view. In our view, manual balloting, as compared to mail balloting, is far more likely to achieve these essential elements of elections.

Nothing emphasizes the importance of the voter's choice more than the symbolism and the drama which accompanies a manual ballot. Employees are first alerted to their forthcoming choice when presented with authorization cards. The drama begins with the preelection hearing and formal announcement by conspicuously posted election notices. Electioneering intensifies until the day before the election. The next day the Board agent appears, surveys the facility, marks off the no-campaign areas, and instructs the observers. Usually with great solemnity and visibility, the agent seals the ballot box, opens the polls and superintends the campaign free area. Everything points to the so-

lemnity and importance of the employee's choice, and more than any words, this process says to the employee, "This is important—so important that the United States Government has sent its agent to protect your right to vote in a free and unfettered election."

As to secrecy of the ballot, the voter in a manual election stands in the privacy of the voting booth. No one can see how he or she votes. In a mail ballot, the marking of the ballot can occur at any place, public or private, and it can occur in the presence of another person or indeed scores of other persons.

With respect to the integrity of the ballot, the Board agent, in a manual election, monitors closely the entire balloting procedure. The agent is on site to guard against improprieties and to observe and report any that occur. With a mail ballot, there is no such guardian. As the Board has said: "Mail ballot elections are more vulnerable to the destruction of laboratory conditions than are manual elections because of the absence of direct Board supervision over employees' voting." *Thompson Roofing, Inc.*, 291 NLRB 743 at fn. 1 (1988).

Historically, the Board and its agents have fulfilled this role in an exemplary fashion. The manual election is the one area where all sides (management, unions and employees) traditionally set aside their differences and uniformly praise the manner in which Board agents perform their responsibilities. Conversely, if the election is conducted outside the presence of a Board agent, the solemnity of the process is lost as ballots are intermixed with junk mail, and the diffusion of balloting over time at multiple locations jeopardizes the integrity of the election process. In short, the manual election is the Board's "crown jewel," and we would not abandon it unless there is a showing that such an election is infeasible.

With respect to coercion, the Board agent will not permit any such coercion to occur during the balloting process. By contrast, such coercion can easily occur in a mail ballot situation. An employer or union agent can stand over the employee and even inspect his ballot to make sure that the vote is "right." An "election party" where mail ballots actually are marked can be held in which there is peer pressure to vote the "right" way. Votes can be bought, with money or promises, and the purchaser can make sure that he or she gets what was paid for. These are just a few examples of potential abuse.³ Even in situations where there is no employer or union misconduct, an election can be so highly charged that an employee should be free to vote his or her preference in a booth, free from the

²The court's reversal of the Board in *Shepard* was based upon the Board's departure from the Manual.

³It is no answer to say there have been few occurrences of these abuses. There have been few instances precisely because, until recently, there have been few instances of mail balloting.

oversight and pressures that can exist even in an employee's home.

With respect to maximum participation, the figures speak for themselves. A recent study showed that 87.9 percent of eligible employees participated in manual elections, and 68.14 percent participated in mail ballot elections, a difference of almost 20 percent.⁴

With respect to the factor of full opportunity to hear all points of view, we note that, under *Peerless Plywood*, 107 NLRB 427 (1953), the employer is essentially barred from having group meetings with employees during the 24-hour period before the balloting. While this rule may make good sense prior to a manual election, the application of that rule to a mail ballot election makes no sense. The mail ballot election occurs over a period of several weeks, and thus the *Peerless Plywood* rule applies to the entire period beginning 24 hours before the ballots are mailed by the Regional Director and ending with the return of the ballots.⁵ Thus, a mail ballot significantly silences one of the campaign voices during an essential part of the campaign.⁶ That approach is inconsistent with the goal of a truly informed electorate.

3. The instant case

In the instant case, a manual election is not infeasible. For example, a Board agent from the San Diego office could travel to all eight sites and back to San Diego. According to the Acting Regional Director, even after adding time for voting, the entire task (traveling and election) would take about 8 hours. Clearly, this is not an "infeasible situation." A Board agent, in a single day, can accomplish the entire task.

The Acting Regional Director concluded that a mail ballot was warranted on the basis that the employees were "scattered because of their duties," citing a portion of the Manual, Section 11336. We disagree. Unlike employees whose work causes them to roam over large distances (e.g., truckdrivers), the employees here work at fixed sites. The case is not different from any case involving a multi-site unit. In any event, the sites are not separated by large geographical distances; the sites are only 80 miles apart. Further, even if the employees are "scattered," within the meaning of the Manual provision, that same provision goes on to state that, in such circumstances, "the possibility [of a mail ballot] should be explored." And, most significantly, the Manual thereafter explicitly provides that a mail ballot should be conducted only if all parties consent,

unless a manual ballot would be infeasible. As shown above, that is not the case here.

4. Response to majority

In support of their view, our colleagues rely on *Halliburton Services*, 265 NLRB 1154 (1982), and *National Van Lines*, 120 NLRB 1343 (1958). The cases are inapposite. In *Halliburton*, the issue was the time and place of a manual election. In *National Van Lines*, the issue was whether the particular mail ballot procedures devised by the Regional Director were appropriate. By contrast, the issue in the instant case is manual balloting as opposed to mail balloting. That matter is subject to Board policy and practice, as articulated in the Manual.

Our colleagues point to three situations that, in their view, "normally suggest the propriety of using mail ballots." We will address those situations below. However, before doing so, we believe that, irrespective of the criteria used, the burden of proof is on the party who seeks to depart from the norm, i.e., from the preferred route of a manual election.

Our colleagues say that the Regional Director has discretion, and that the burden of proof is on the appealing party to show an abuse of discretion. We disagree. Concededly, the Regional Director has some discretion in deciding whether to hold a mail ballot election. However, as our colleagues recognize, that discretion "is to be exercised within certain guidelines." In sum, if the Regional Director is acting within those guidelines, he has discretion to order a mail or manual ballot, and the appealing party must show an abuse of discretion. But, as to the issue of *whether* the Regional Director has acted within the guidelines, we believe that the burden of proof is on the party who wishes to depart from the norm of a manual ballot.

With respect to the first "situation," we would agree that a mail ballot is generally appropriate where eligible voters are "scattered," (i.e., are at many locations) over a wide geographic area because of their job duties.

The second "situation" deals with employees who are "scattered" in the sense that their work schedules vary significantly." As to these employees, our colleagues say that their mail-ballot criteria would apply "in any situation where all employees cannot be present at the same place at the same time." We disagree. Thus, for example, a Board agent can conduct the election in two phases corresponding to two shifts. And, this would be true, even if the shifts extend to a second day. Further, even if the election site is geographically removed from the Regional Office, a Board agent can make one trip, and can attend to other Board business during election "down" times. Similarly, where employees report to a central facility and then

⁴Memorandum from NLRB General Counsel Fred Feinstein to NLRB Chairman William B. Gould IV, dated June 2, 1994.

In *Shepard*, the participation rate was a mere 18 percent, with the result that a union was elected with less than 10 percent of those eligible to vote.

⁵*Oregon Washington Telephone Co.*, 123 NLRB 339 (1959).

⁶Moreover, a union can visit employees at home; the employer cannot do so.

go on the road, the election can be held at the times when they report to the central facility.⁷

As to the third “situation” we do not agree that a mail ballot is necessitated by a strike, lockout, or picketing. For example, where the strikers all live in the same small community, they can reasonably come to a neutral polling place.⁸

We recognize that it may be cheaper to hold a mail ballot, as opposed to a manual one, in some of the situations described above. However, for the reasons discussed in this opinion, we think that the extra expenditure, if any, is money that is well spent for the attainment of our statutory goal, viz., insuring the integrity of a free and secret ballot election with maximum participation.

We acknowledge that we must be prudent in the expenditure of scarce public resources. At bottom, the issue is one of establishing priorities among competing demands on the funds available to the Agency. In our view, the obligation to insure integrity in the conduct of elections is perhaps the most important obligation of the Board. The Board has achieved an excellent record in this regard. This is due, in no small part, to the integrity that is ensured by the presence of a Board agent at a manual election. We think that it would be “penny-wise and pound-foolish” to risk this enviable record in an effort to achieve some savings.⁹

Finally, our colleagues’ application of their criteria to the instant case causes us concern about the criteria themselves. Our colleagues say that the employees here are “scattered over a large geographic area, that employees would have to travel long distances in order to vote, and that a manual election would require a substantial expenditure of Agency resources.” None of this is true. As noted above, a single Board agent can travel from the Board office in San Diego to all eight election sites. The entire endeavor would involve 8 hours. In sum, the unit employees will not have to travel at all; the election will come to them. And the cost of one Board agent for one day is money well spent to insure industrial democracy.

5. Response to concurring opinion

Chairman Gould’s concurrence argues that the Casehandling Manual has been superseded by *Shepard*

and subsequent Board decisions. However, as noted above, the Board’s decision in *Shepard* was reversed by the circuit court because it departed from the Manual. The Chairman’s subsequent opinions then rely on the overturned Board decision in *Shepard*. In these circumstances, we would not rely on *Shepard* and the subsequent cases to say that the Manual has been superseded. More accurately, it has been ignored.

The concurring opinion suggests that “some employers” seek to direct the Board agent at a manual election, so as to make it appear that the employer controls the Board’s election procedures. Assuming *arguendo* that some employers may seek to do this to achieve a tactical advantage through the Board’s procedures, we have confidence in the ability of the Board agents to control the situation. Further, to the extent that the employers succeed in this stratagem, the objection procedure is always available to redress the situation.¹⁰ Thus, significantly, in manual ballot elections the presence of a Board agent and the parties’ observers acts as a deterrent to objectionable conduct and, to the extent that objectionable conduct may occur in the polling and adjacent areas, evidence of such conduct is readily available through the observers. In contrast, in a mail ballot election, coercion of employees, particularly if it is successful, is far less likely to become known to the parties and obtaining evidence in support of objectionable conduct is far more difficult.

The concurring opinion further says that we “suggest that unions have the advantage over employers in communicating with employees concerning their views of representation.” The concurrence then goes on to contend that this is not so. We do not consider this “mail ballot” case to be the appropriate forum in which to debate which party, if any, has a communication advantage. Our sole point is that a mail ballot does not simply change the method of voting; rather, by extending the *Peerless Plywood* period, a mail ballot imposes a significant limitation on one party’s acknowledgeably effective means of communicating with the employees.¹¹

⁷ Concededly, if the employees are always on the road, or report at widely varying times, a mail ballot may be necessary.

⁸ If a significant number of strikers have left the geographic area, a mail ballot may be necessary. Similarly, if a significant number of strikers have interim jobs which preclude their coming to a manual election, a mail ballot may be necessary for them.

⁹ Of course, there may be instances where the costs are so prohibitive, or the drain on staff-power so substantial, that a mail ballot election is the only practical alternative. In this footnote, and in the prior two footnotes, we recognize that mail ballots are sometimes appropriate, even where a manual ballot is theoretically possible. Thus, the majority has mischaracterized our position.

¹⁰ In his concurring opinion, Chairman Gould says that this strategy is effective and is not always redressed by the objection procedure. These “facts,” in turn, are based on the Chairman’s “many conversations with management attorneys.” We would not rely on these nonrecord conversations, and thus we cannot find, on this record, the fact that he has found. Nor would we rely on the anecdotal hearsay “evidence” recited in a book called *Confessions of a Union Buster*. In our view, major changes in Board policy (e.g. altering the historic role of manual ballots) should not be based on such a slender reed. In addition, as the Chairman concedes, our position in favor of mail balloting is not based on favoring one side or the other. We simply wish to assure that Board elections are conducted in such a way as to best protect the Section 7 right to vote freely.

¹¹ Member Brame believes that, given the continued erosion of the once even-handed *Peerless Plywood* rule, the time has come to reexamine *Peerless*’ premises in light of current empirical data and to

Finally, the concurrence notes our data (*supra*) which show that employee participation rates are higher in manual elections than in mail ballot elections. The concurrence contends that the data can be disregarded because mail ballots are used in circumstances where it is inherently difficult to obtain voter participation. He apparently believes that, absent a mail ballot in these cases, the participation rate would have been even lower. However, he cites no data for his thesis. In addition, under his view, a mail ballot can be held solely for budgetary reasons, i.e., when there is no problem of voter participation. We

reassess its restrictions on employer free speech in light of First Amendment jurisprudence.

would not sacrifice employee participation for the sole purpose of saving money.

6. Conclusion

The manual election lies at the heart of our system of workplace democracy. It is the cornerstone of this Agency's contribution to the successful workings of that democracy. Because of this, the Agency's historic practice has been to hold manual elections, except in rare circumstances where such elections are not feasible. Those circumstances were not present in *Shepard*, and they are not present here. Therefore, in deference to our values and our traditions, we would hold a manual election here.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SAN DIEGO GAS & ELECTRIC
Employer



and

Case 21-RC-19862

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 465,
AFL-CIO

Petitioner

ORDER

Employer's Request for Review of the Acting Regional
Director's Decision and Direction of Election is denied as
it raises no substantial issues warranting review.

SARAH M. FOX, MEMBER

WILMA B. LIEBMAN, MEMBER

MEMBER HURTGEN, dissenting:

I would grant the Employer's Request for Review.

PETER J. HURTGEN, MEMBER

Dated, Washington, D.C., January 5, 1998.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

SAN DIEGO GAS & ELECTRIC¹

Employer

and

Case 21-RC-19862

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
LOCAL 465, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was conducted before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The Employer's name appears as amended at the hearing.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All dispatchers, dispatch assistants, and district clerks employed by the Employer in its construction and operations districts, at the following facilities: Mountain Empire District, Pine Valley, California; Eastern District, El Cajon, California; Metro District, 701 33rd Street, San Diego, California; Beach Cities District, 4848 Santa Fe Street, San Diego, California; North Coast District, Carlsbad, California; Northeast District, Escondido, California; Orange County District, San Clemente, California; and the Ramona Satellite Office, Ramona, California; excluding all other employees, clerical employees, professional employees, guards and supervisors as defined in the Act.

The Employer is a utility company engaged in the business of providing gas and electrical services in San Diego and Orange Counties, California. The Employer operates from numerous facilities and its operations are broken down into numerous districts and departmental units. Certain of the Employer's employees are covered by collective-bargaining agreements, others are not.

The Petitioner seeks a unit consisting of all dispatchers, dispatch assistants, and district clerks who work in

the Employer's Construction and Operations districts ("C&O").² The Employer contends that the unit³ sought by the Petitioner is not appropriate for the purposes of collective bargaining because it does not include the following employees: two Gas utility clerks -- Gloria Hinz and Laura Zorrota -- who work at the Employer's Miramar facility; one crew dispatcher -- Jim Fruchae, one fleet dispatcher (name unknown), and one operations assistant (name unknown), all of whom work at the Employer's Kearny facility; two vehicle dispatchers -- Gloria Ortega and Tim _____⁴ who work at the Employer's Ash Street facility; three meter dispatch assistants: Diana Rolston, who works at Meter Service Metro; Tracy Hollingsworth, who works at Meter Service North; and Frances Evans, who works at the Beach Cities C&O District; and finally, Gwendolyn Murphy, who works out of the construction

² The Employer has seven C&O districts and one C&O satellite office; Mountain Empire-Pine Valley, California; Eastern-El Cajon, California; Metro-701 33rd Street, San Diego, California; Beach-4848 Santa Fe Street, San Diego, California; North Coast-Carlsbad, California; Northeast-Escondido, California; Orange County-San Clemente, California; and the Ramona Satellite Office-Ramona, California.

³ The parties stipulated that all of the dispatchers and dispatch assistants at the C&O districts, as well as certain of the district clerks, should be included in any unit found to be appropriate. This stipulation covers 11 dispatchers (names unknown), two dispatch assistants (names unknown), and four district clerks-Alice Baker, Dawn Cole, Bob Fox, and Gabrielle Villa. In its brief, the Employer attempts to back off from this stipulation by saying that, if the Employer's broadened unit is found not appropriate, the stipulated group may not be appropriate because it encompasses many different offices with many different supervisors. The Employer, however, has not withdrawn from the stipulation. The Employer has also presented no evidence regarding the supervision of the stipulated group. Accordingly, I find that these 17 employees in the agreed upon classifications shall be included in the Unit.

⁴ The record does not reveal Tim's last name. Hereinafter he is referred to simply as "Tim."

services department in the Century Park facility.⁵ The Employer also argues that two of the C&O district clerks--Joanne Bordon and Sharon Cardenas--should be excluded from the unit because they do not share a community of interest with the other dispatchers.

The C&O dispatchers and dispatch assistants ("C&O Dispatchers") are broken down into three categories: overhead dispatchers; underground dispatchers, and gas dispatchers. All three categories have similar duties and are cross-trained so that each can perform the other's duties.⁶ The C&O dispatchers' duties are also similar from district to district; little trouble would exist were a C&O dispatcher to work at a different district. The C&O dispatchers also interact among each other if work crews are sent to a different district. The C&O dispatchers are apparently supervised within their particular district in that they do not share common supervision.

The C&O dispatches receive work orders over the Employer's DPSS system, coordinate the necessary personnel and equipment resources, schedule the work, and keep records regarding the scheduled work. In coordinating the necessary resources, the C&O dispatchers sometimes interact with other dispatchers, including the Fleet dispatchers. The work crews are generally dispatched via the computerized DPSS system, with the

⁵ The parties agree that all of the employees in question are in pay grades 8-12, work a set schedule, have essentially the same benefits, and are subject to all of Employer's normal personnel policies.

⁶ Apparently, some C&O dispatchers perform more than one type of dispatching. Dispatcher Gloria Zuniga testified that she dispatched both overhead and underground crews.

work orders being entered into the system by either the C&O dispatchers or supervisors. However, the crews are sometimes dispatched by radio. C&O dispatcher Zuniga testified that she spends 25-30 percent of her day directly dispatching crews by radio.⁷

The C&O district clerks are essentially relief employees. They fill in for dispatchers or other clerical employees who are on vacation or otherwise indisposed. While filling in for dispatchers, they perform the same functions as the vacationing dispatcher. The district clerks spend anywhere between 10-50 percent of their time filling in for C&O dispatchers.

The Employer's two gas utility clerks ("gas clerks") work in the gas operations department and are supervised by Pipeline Services Supervisor Richard Lifer. Both gas clerks work at the Employer's Miramar facility. None of the C&O dispatchers work out of this facility.

Gas clerk Gloria Hinzo spends about 25 percent of her time dispatching pipeline operations crews. The remainder of her time is spend on routine clerical duties. She also assists in preparing a route sheet for the crews. Hinzo dispatches these crews by radio or telephone, not through the DPSS system. Hinzo does not take calls from any of the districts but occasionally talks with outside customers. She has no interaction with the C&O dispatchers. Hinzo is trained to backup the other gas clerk,

⁷ However, Metro C&O Manager Michael McNabb testified that C&O Dispatchers only spend about 10 percent of their time on the radio.

Laura Zorrota, but is not trained to perform any other dispatch functions, including those of the C&O dispatchers.

Gas Clerk Laura Zorrota dispatches crews who perform commercial meter sets. Zorrota receives orders for setting or updating field gas meter sets, then assigns the set to a crew. If the crew discovers a gas leak while doing a meter set, the crew could either have Hinzo or Zorrota call a C&O dispatcher or could call the C&O dispatcher themselves. However, the crews repair 99 percent of the leaks themselves; the last time a C&O dispatcher was contacted because of a leak was at some point less than 3 years ago.⁸ Other than this potential gas leak problem, Zorrota also does not interact with the C&O dispatchers.

Crew Dispatcher Jim Fruchae works at the Employer's Kearny facility. No C&O dispatchers work at this facility. Fruchae is supervised by Frank Johnson, the assistant protection maintenance section supervisor. This section is part of the Employer's electrical construction and maintenance department. Fruchae spends 60-70 percent of his time dispatching seven Kearney based relay crews; the remainder of his time is taken up by timekeeping responsibilities. Fruchae dispatches via a computer system unique to the Kearney facility; he does not use DPSS. The section foremen determine the composition of the crews then tell Fruchae which crews are available. The foremen often reschedule the crews after Fruchae schedules them. Fruchae does not interact with the C&O dispatchers. However, in emergency

⁸ Lifer could not pinpoint the time any more accurately than this.

occasions such as a storm, one of Fruchae's crews may be dispatched by a C&O dispatcher.'

Four dispatchers are supervised by Christopher Lyons, manager for fleet operations. Two of the dispatchers, the fleet dispatcher and the fleet operations assistant, work out of the Employer's Miramar facility. These two dispatchers receive orders from either the C&O dispatchers or C&O foremen for equipment and equipment operators. They then plan and assign the operators' work. They also dispatch field mechanics. Their dispatching is done via radio; they do not appear to use DPSS.

Lyons also supervises two vehicle dispatchers--Gloria Ortega and Tim. The vehicle dispatchers work at the Employer's Ash Street facility. No C&O dispatchers work at this facility. The vehicle dispatchers do not dispatch crews. They also have no interaction with the C&O dispatchers.

The Employer employs three dispatchers in its meter services department. Dispatch Assistant Diana Rolston works at the Employer's facility located at 6145 Mission Gorge Road, San Diego, California. No C&O dispatchers work at this facility. Rolston is supervised by Margaret Florence, supervisor of metro meter reading. Rolston's duties revolve around hand-held meter reading processors. She loads, maintains, and enters information into the processors. She does not schedule routes. However, she can reschedule routes in the event of illness or vacation, or if

⁹ This has not happened for some time. Johnson testified it may have happened last year but definitely not this year. The last occurrence was apparently the subject of a union-filed grievance.

a regularly scheduled route was not completed the previous day. In performing her dispatch duties, Rolston uses two computer systems, CISCO and MERMS. Rolston does not normally interact with C&O dispatchers.

Dispatch Assistant Stacy Hollingsworth works out of the Employer's Northern Meter facility in San Dimas, California. No C&O dispatchers work out of this facility. She is supervised by Steve Krebs. Apparently, Hollingsworth performs the same duties as Rolston.¹⁰

Dispatch Assistant Frances Evans works from the Beach Cities district office. C&O dispatchers work at this facility. Evans is supervised by David Lowe, manager of Metro Meter Services. Evans dispatches four electricians who wire and set electrical meters in new construction. These four electricians work from the beach cities district, the eastern district in El Cajon, California, the northeast district in Escondido, California, and the north coast district in Carlsbad, California. C&O dispatchers work at all of these offices. In dispatching the electricians, Evans uses DPSS, another system called SORT, and a radio. Evans coordinates meter installation with the C&O dispatchers. Further, Evans used to work with the C&O dispatchers at the north coast district.¹¹

¹⁰ The only testimony presented regarding Hollingsworth was from Margaret Florence. She testified that Hollingsworth performs the same job as Rolston.

¹¹ Lowe believes, but does not know for sure, that Evans used to fill in for C&O Dispatchers from time to time when she worked at North Coast. Evans did not testify.

Dispatcher Gwendolyn Murphy works at the Employer's Century Park facility. No C&O dispatchers work at this facility. Murphy is supervised by Robert Vorrasso, manager of construction services. Murphy issues orders to servicemen for resets and re-lights. She also handles "Graffiti" orders and some tree-trimming orders. However, most tree-trimming orders go directly from the ordering district to the individual tree-trimming contractors, bypassing Murphy. Murphy does work with DPSS but interacts with the dC&O dispatchers rarely, if at all. She also does not interact with the other dispatchers described herein.

The primary issue here is whether the unit sought by the Petitioner is appropriate for collective bargaining. In making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine whether the unit sought is an appropriate unit. P.J. Dick Contracting, 290 NLRB 150 (1988). In so doing, the Board looks "first to the unit sought by the petitioner. If it is appropriate, [the] inquiry ends. If, however, it is inappropriate, the Board will scrutinize the Employer's proposals." Dezcon, Inc., 295 NLRB 109, 111 (1989).

In the present case, the Employer argues that the only appropriate unit must include those categories noted above, in addition to the categories noted in the petitioned-for unit, arguing essentially that the above-noted classifications of employees share such a strong community of interest with the unit employees so as to mandate their inclusion. In addition, the Employer avers that two unit employees should be excluded because

they do not share a community of interests with the unit employees.

Many considerations enter into a community of interest determination. The petitioner's desire for a unit, Marks Oxygen Co., 147 NLRB 228 (1964); the degree of functional integration, ACL Corp. d/b/a Atlanta Hilton & Towers, 273 NLRB 87 (1984); the nature of employee skills and functions, Phoenician, 308 NLRB 826 (1992); common supervision, Harron Communications, 308 NLRB 62 (1992)¹²; interchangeability and contact among employees, Associated Milk Producers, 250 NLRB 1407 (1970); wages and fringe benefits, Allied Gear & Machine Co., 250 NLRB 679 (1980); and work situs, Kendall Co., 184 NLRB 847 (1970). All of these factors must be weighed when determining community of interest, no one factor can predominate. See, e.g., Brand Precision Services, 313 NLRB 657 (1994).

The Employer first argues that District Clerks Joanne Warden and Sharon Cardenas should be excluded because they lack a community of interest with the unit employees. McNabb testified that his district clerk spends about 50 percent of his time filling in for the dispatchers. However, Orange County C&O Manager James Valentine testified that his district clerk, Joanne Warden, only spends about 10 percent of her time dispatching. Further, eastern district C&O Manager Frederick Flihan testified that he has two district clerks, Alice Baker and Sharon Cardenas. Baker spends about 20 percent of her time dispatching; Cardenas

¹² Conversely, different supervision is not a per se basis for excluding employees from an appropriate unit. Texas Empire Pipeline Co., 88 NLRB 631 (1950).

spends about 15 percent of her time dispatching. The Employer has stipulated that Baker belongs in any appropriate unit but seeks to exclude both Warden and Cardenas. The only apparent basis for their proposed exclusion is that they spend a smaller amount of time dispatching. The difference between Baker's 10 percent and the 10-15 percent of Warden and Cardenas is negligible. Other than the amount of time spent dispatching, the Employer has not produced any evidence showing that Warden's and Cardenas' duties are any different from those of the other district clerks. Accordingly, I find that the Employer has failed to sustain its contention. I find that both Warden and Cardenas in fact share a community of interest with the unit employees, and accordingly, they shall be included in the unit.

Next, the Employer argues that the various noted categories of employees must be included in order to constitute an appropriate unit. The C&O dispatchers at issue in this case work in one department (Construction and Operations) and they work at eight separate district offices. They dispatch work crews by means of the DPSS system and radio. They are cross-trained and can perform any of the three different C&O dispatcher positions. The dispatcher duties are relatively similar from district to district; a C&O dispatcher from one district could work at another district with little training. The C&O dispatchers also regularly interact with each other. While the C&O dispatchers do not share common supervision, this fact does not preclude them from forming an appropriate unit. Texas Empire Pipeline, supra.

In the instant case, the facts clearly show that most of the additional employees the Employer seeks to add to the proposed unit do not share a community of interest with the C&O dispatchers. The other dispatchers which the Employer seeks to include, work in a variety of departments and at a variety of facilities. The only other dispatchers who interact with the C&O dispatchers are the fleet dispatcher, the fleet operations assistant, and Dispatch Assistant Evans. The dispatchers the Employer seeks to add also do not appear to interact with each other. Evans is also the only other dispatcher to share a common work situs with the C&O dispatchers. While the C&O dispatchers are crosstrained and can replace each other, none of the other dispatchers, save perhaps Evans, can perform the duties of the C&O dispatchers. The C&O dispatchers primarily dispatch via DPSS and radio. While most of the other dispatchers use the radio, the only other dispatchers to use DPSS are Evans and Murphy. All of the dispatchers at all of the facilities do have common benefits and earn similar wages. However, as set out above, wages and benefits are merely one factor to take into consideration among many other factors.

The record reveals that Dispatch Asssistant Frances Evans works at the Beach Cities district office at which unit C&O dispatchers also perform work. The electricians dispatched by Evans also work out of district offices. Evans uses the same dispatching systems as the C&O Dispatchers. Gloria Zuniga testified that she interacts frequently with Evans; presumably, the other C&O dispatchers frequently interact with her as well.

Accordingly, based on the record as a whole, it is concluded that Dispatch Assistant Frances Evans shares a close community of interest with the unit employees such that she must be included in the appropriate bargaining unit. With regard to the other categories of employees which the Employer seeks to include in the unit, the Employer has failed to establish that they share such a close community of interest with the unit employees to mandate their inclusion. Accordingly, the Employer's contention is rejected. Based on the record as a whole, I conclude that the petitioned for unit, as modified above, is an appropriate unit for collective bargaining.

There are approximately 20 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have

quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the International Brotherhood of Electrical Workers, Local 495, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters at each of the Employer's facilities noted in the appropriate unit, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, on or

before December 10, 1997. No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

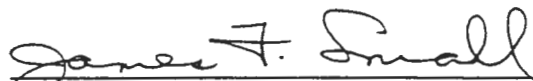
NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

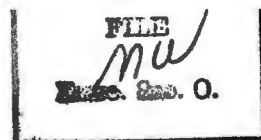
RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EST, on December 17, 1997.

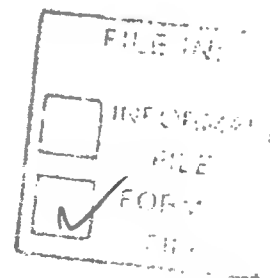
DATED at Los Angeles, California, this 3rd day of December, 1997.


James F. Small
Acting Regional Director, Region 21
National Labor Relations Board

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UNION/PETITIONER RESPONSE TO EMPLOYER'S REQUEST FOR REVIEW OF DECISION
OF REGIONAL DIRECTOR TO CONDUCT A MAIL BALLOT ELECTION



San Diego Gas & Electric Company
Employer

and

Case No. 21-RC-19862

International Brotherhood of Electrical
Workers, Local Union 465
Petitioner

David Moore, Business Manager / Financial Secretary
Jerry Fecher, Business Representative
IBEW Local Union 465
229 W. Washington Street
San Diego, CA 92103-1997
(619) 297-2875
FAX: (619) 297-2615

Presented to the National Labor Relations Board on
30 December 1997

SUMMARY OF ARGUMENT

A. The Employer has not provided any compelling reasons to warrant review under the Board's Rules and Regulations.

B. The Employer has not provided any practical reasons for their opposition to a mail ballot.

Conclusion: The Regional Director's Decision to hold a mail ballot in the instant case should be sustained.

I. BACKGROUND

On December 3, 1997, Region 21 issued a Direction for Election for Dispatchers, Dispatch Assistants, and District Clerks in the Employer's Construction and Operations Districts. There are 20 eligible voters, scattered throughout San Diego and Orange Counties in eight separate locations. There are one to three eligible voters in each District.

Region 21 issued letters to both the Petitioner and the Employer on December 9, 1997 stating that they were considering a mail ballot for an election in the instant case. The Petitioner responded by stating our preference for a mail ballot. The Employer, conversely, responded by stating their opposition to a mail ballot and by proposing the election to be held at two sites: Northeast and Century Park. The latter site contains the offices of the Employer's Labor Relations and Human Resources Department, and none of the eligible voters work at that facility. This was the *only* proposal forwarded by the Employer to the Region.

The Petitioner objected to the Employer's proposal, since one to three employees are employed at eight different facilities scattered throughout San Diego and Orange Counties. Under the Employer's proposal, employees would have to travel up to 120 miles round-trip to election sites. Although the Company said they would provide transportation, the Petitioner objected to any

1 possible advantage the Employer would have by transporting these employees
2 to the election sites. Additionally, we objected to the Company's use of a non-
3 neutral site (Century Park) where none of the eligible voters work, and which
4 houses the Labor Relations and Human Resources Departments.

5 The Regional Director, in two letters dated December 18th and December
6 24th, set forth the Region's decision to hold a mail ballot in the instant case.
7 (These letters are attached as Exhibit 1.) The Employer's Request for Review
8 fails to show that the Regional Director's decision was clearly erroneous, nor
9 does it show departure from Board precedent.

11 II. ANALYSIS

13 A. The Employer has not provided any compelling reasons to warrant review 14 under the Board's Rules and Regulations.

16 The Employer has not asserted any "compelling reasons" for the Board to
17 review the decision of the Regional Director. Under § 102.67 of the Board's
18 Regulations, the acceptable reasons for review are outlined below:

20 * * *

1 (c) The Board will grant a request for review only where compelling reasons ex-
2 ist therefor. Accordingly, a request for review may be granted only upon one or
3 more of the following grounds:

4
5 (1) That a substantial question of law or policy is raised because of (i) the ab-
6 sence of, or (ii) the departure from, officially reported Board precedent.

7
8 (2) That the regional director's decision on a substantial factual issue is clearly
9 erroneous on the record and such error prejudicially affects the rights of a party.

10
11 (3) That the conduct of the hearing or any ruling made in connection with the
12 proceeding has resulted in prejudicial error.

13
14 (4) That there are compelling reasons for reconsideration of an important Board
15 rule or policy.

16
17 * * *

18 As stated in the Regional Director's letter of December 18, 1997, "a mail
19 (postal) ballot could be accomplished with a minimal expenditure of Agency re-
20 sources and no employee would be expected to travel away from his work sta-
21 tion to a central polling site." (Letter of Regional Director 12/28/97, p. 2) The
22 Regional Director correctly cited the NLRB Representation proceedings Case-

1 handling Manual, Part II, 11336, which allows for mail ballots to be conducted in
2 instances of scattered employees and long distances. The instant case involves
3 both. The Regional Director also noted cases where logistical inconveniences
4 will result in a mail ballot. *London's Farm Dairy, Inc.*, 323 NLRB No. 186; and
5 *Reynolds Wheels International*, 323 NLRB No. 187. The Employer contends that
6 these cases should not apply, since they included employees with staggered
7 shifts. But staggered shifts are a concern for the Board, just as much as the lo-
8 gistical travel difficulties are in the instant case.

9 Under the Employer's scenario, three employees would have to travel
10 over 40 miles round-trip, with one person required to travel 120 miles round
11 trip. Additionally, a Board Agent would have to travel from Los Angeles or
12 downtown San Diego in order to conduct the elections. Also, only three indi-
13 viduals at Northeast would be able to vote where they work.

14 The Petitioner submits that the Regional Director's decision should be
15 sustained, and that no compelling reasons exist to do otherwise.

16
17 **B. The Employer has not provided any practical reasons for their opposition**
18 **to a mail ballot.**

19
20 The Employer has not provided nor demonstrated any actual reasons
21 why a mail ballot would be inappropriate, nor have they shown that the proce-

1 | dure of a mail ballot is an impediment to a fair election process as outlined by
2 | the Board.

3 | Conversely, the Petitioner has lodged practical concerns for the mail bal-
4 | lot in this instance. They include the following:

- 5 |
- 6 | • A mail ballot is practical for all parties involved, and will result in a more
7 | appropriate allocation of expenditures for the Board and all related parties.
 - 8 | • Employees have contacted both the Petitioner and the Board, expressing their
9 | desire for a mail ballot.
 - 10 | • There exists a reasonable concern for any advantage the employer might
11 | have in the course of their transporting eligible employees over great dis-
12 | tances to the polling places.
 - 13 | • The Employer's only proposal includes a facility (Century Park) which
14 | houses the Employer's Labor Relations and Human Resources Departments,
15 | and *none* of the eligible employees work at that facility.
- 16 |

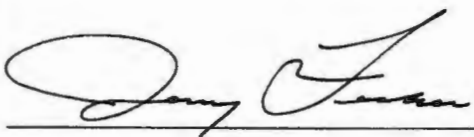
17 | A mail ballot would therefore be the fairest and most convenient proce-
18 | dure given all of the logistical constraints and concerns. The Petitioner submits
19 | that the Regional Director correctly considered all of these factors in coming to
20 | his decision and that decision should be sustained.

III. CONCLUSION

The Employer has not shown any compelling reasons why the Board should overturn the Regional Director's Decision regarding the use of a mail ballot procedure. The Regional Director's decision to utilize the mail ballot procedure is reasonably based on logistical concerns, and upon the concerns of a fair election process. The Employer's Request for Review should thus be denied in full, and the Board should direct the mail ballot election to take place as scheduled.

Respectfully submitted,

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 465

A handwritten signature in cursive script, appearing to read "Jerry Fecher", is written over a horizontal line.

Jerry Fecher, Business Representative

David A. Moore, Business Manager/Financial Secretary

EXHIBITS

EXHIBIT 1



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 21

888 South Figueroa Street, Ninth Floor

Los Angeles, CA 90017-5449

Facsimile: (213) 894-2778

Telephone: (213) 894-5210

Resident Office:

555 W Beech St - Suite 302

San Diego, CA 92101-2939

December 24, 1997

Sheppard, Mullin, Richeter & Hampton LLP
Attn.: David Chidlaw, Esquire
501 West Broadway, 19th Floor
San Diego, CA 92101

DEC 29 1997

International Brotherhood of Electrical Workers,
Local 465, AFL-CIO
Attn.: Jerry Fecher, Business Representative
229 West Washington Street
San Diego, CA 92103

Re: San Diego Gas and Electric
Case 21-RC-19862

Gentlepersons:

In a letter dated December 18, 1997, copy attached, I advised the parties that I intended to conduct a mail (postal) ballot election in this matter. The Employer in a facsimile letter dated December 22, 1997, requested that I reconsider my decision to conduct a mail ballot in the above-captioned case. The Employer's request is attached hereto. The Petitioner in a facsimile letter dated December 23, 1997, voiced opposition to the Employer's request and noted support for the use of a mail (postal) ballot. The Petitioner's letter is also attached hereto.

I recognize the cogent arguments presented by the Employer. I clearly understand the appropriateness of the manual ballot concept, and appreciate the Employer's interest in encouraging a full and free exercise of the franchise by all eligible voters.

Let me begin by noting that both parties were solicited for their views on the topic of manual versus mail (postal) ballot election in a letter on December 9, 1997. The parties were also asked to provide proposals for an appropriate logistical sequence for a manual election. The Petitioner in a letter dated December 11, 1997, provided such information while noting that it preferred a mail (postal) ballot. The Employer in a letter dated December

12, 1997 **only** proposed conducting the election at two sites. The Employer did **not** describe an appropriate logistical sequence for the conduct of the election; nor did the Employer suggest whether it was proposing one or two Board agents to conduct the election.

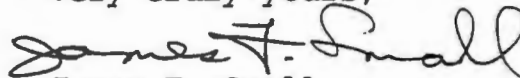
Accepting the Employer's proposal for the conduct of a manual election at two locations would entail: 17 of the 20 employees traveling/driving to vote in the election¹; and utilizing the Employer's Century Park location, which the Petitioner contends houses the Employer's labor relations and human resources offices and where not a single one of the unit employees works.

While not dispositive of whether an election should be a mail (postal) versus manual ballot, this office has been contacted by persons who purport to be unit employees of the Employer. These persons express a view that they would prefer to vote a mail (postal) ballot rather than drive to either proposed polling site suggested by the Employer.

I have carefully considered the Employer's request and the Petitioner's opposition thereto, and the arguments contained in both documents. For the reasons set forth in my letter of December 18, 1997, and for the additional reasons described herein, I believe my decision to conduct a mail ballot in this case is an appropriate exercise of my discretion in this Directed election situation. This letter is to advise that I adhere to my decision to conduct a mail (postal) ballot election in this case.

Inasmuch as the Employer has filed a Request for Review of my decision to conduct a mail ballot, I am forwarding this letter with attachments to the Board.

Very truly yours,



James F. Small
Acting Regional Director

Attachments

cc: Office of Representation Appeals, National Labor Relations Board

¹ Interestingly enough, this same figure, 17, is the number of employees that the Employer contends would travel/drive 20 miles or less to vote in the election. The inverse of the Employer's observation, of course, is that 3 of the employees would be driving in excess of 20 miles (40 miles round trip) under the Employer's proposal. Indeed, one of the employees would be required to travel/drive at least 60 miles (120 miles round trip) to vote.



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 21

888 South Figueroa Street, Ninth Floor

Los Angeles, CA 90017-5449

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Telephone: (213) 894-5210

Resident Office:

555 W Beech St - Suite 302

San Diego, CA 92101-2939

December 18, 1997

Sheppard, Mullin, Richeter & Hampton LLP
Attn.: David Chidlaw, Esquire
501 West Broadway, 19th Floor
San Diego, CA 92101

International Brotherhood of Electrical Workers,
Local 465, AFL-CIO
Attn.: Jerry Fecher, Business Representative
229 West Washington Street
San Diego, CA 92103

Re: San Diego Gas and Electric
Case 21-RC-19862

Gentlepersons:

I have considered the suggestions of the parties regarding the conduct of the above-referenced election. Simply put, the Employer desires a manual election with two polling locations¹ and the Union desires a mail (postal) ballot election.²

A review of the logistics is in order. There are approximately 20 employees working out of 8 different locations spread across an area of over 80 miles (the distance from San Clemente to El Cajon). The most distant location, San Clemente, is approximately 65 miles from the larger facility in San Diego. Assuming that the Employer is suggesting that we conduct one polling session at the larger facility in San Diego, it is therefore 65 miles from the San Clemente facility to the San Diego facility. It appears that a majority of the unit employees would be traveling in excess of 30 miles to vote, if they travel

¹ Although requested in writing to describe it's proposals for election logistics, the Employer's response was only that it proposed two locations and that it would provide transportation to employees if needed.

² The Union also proposed a formula which would permit the manual voting of all the employees. Under the Union's formula, the Board agent drive time to conduct the election would be approximately 4 hours. However, the Union's preference was for a mail (postal) ballot.

from their work stations to a central polling site in San Diego. The Employer advises that it would provide the unit employees with company vehicles to drive to the two respective polling locations. The Employer advises that one employee has already insisted upon driving himself to a polling location. I cannot determine from the Employer's proposal whether the Employer intended for one Board agent to conduct both polling sites, or whether the Employer was proposing two sites, requiring two agents, at the same time, nor can I determine the amount of Board agent time to accomplish the Employer's proposal.

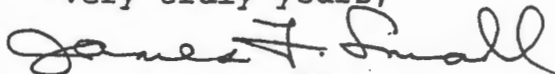
The Union argues that a mail (postal) ballot would be most appropriate, noting the distance between potential voting sites and the employees' jobs, as well as the "perceived" advantage the Employer would have by providing employees with transportation to the polling sites.

As for conducting individual polls at all 8 locations, I have reviewed the time necessary to adequately allow a Board agent to travel between the 8 sites. That time is nearly 4 hours, not including the time necessary to conduct each individual polling session. Thus, at a minimum, I would estimate that 8 hours of Board agent time would be involved to conduct a manual election among the unit employees at all 8 sites.

A mail (postal) ballot could be accomplished with a minimal expenditure of Agency resources and no employee would be expected to travel away from his work station to a central polling site. I note that the *National Labor Relations Board Representation Proceedings Casehandling Manual, Part II*, 11336, suggests that mail ballots should be explored where long distances are involved or where eligible voters are scattered. In the instant situation, there are long distances involved and the employees are scattered. I also note that the mail balloting process could begin after close of the Holiday Season, avoiding any disruptions that might arise in the mails, and accommodating the temporary employee absences during the Holiday Season. (In this regard, the Employer has advised this office that nearly all unit employees are not on the job until after the first of the New Year.)

I have carefully considered the positions and preferences of the parties. I have also reviewed the logistics surrounding the conduct of any manual versus mail (postal) election in this matter. I have carefully analyzed and considered these factors, including guidance from the Board's decisions in *London's Farm Dairy, Inc.*, 323 NLRB No. 186; and *Reynolds Wheels International*, 323 NLRB No. 187. Accordingly, I have determined that this election is appropriate to be conducted as a mail (postal) ballot election. Election details will follow.

Very truly yours,



James F. Small
Acting Regional Director

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

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SAN DIEGO, CALIFORNIA 92101-3598

WRITER'S DIRECT LINE

TELEPHONE (619) 338-6500

OUR FILE NUMBER

(619) 338-6616

FACSIMILE (619) 234-3815

CWY-59561

December 22, 1997

VIA FACSIMILE

Mr. James A. Small
Acting Regional Director, Region 21
National Labor Relations Board
Ninth Floor
888 South Figueroa Street
Los Angeles, California 90017-5449

Re: San Diego Gas & Electric and
International Brotherhood of Electrical Workers, Local 465
Case No. 21-RC-19862

Dear Mr. Small:

This letter is in response to your letter of December 18, 1997. Our client, San Diego Gas & Electric, respectfully requests that you reconsider your decision to conduct an election by mail ballot in the above-captioned matter. Board precedent does not support an election by mail ballot here where the parties have not stipulated to such an election and Petitioner has not demonstrated that a manual election would be infeasible.

It is well settled that "under existing Board precedent and policy the applicable presumption favors a manual election, not a mail-ballot election." Willamette Industries, Inc., 322 NLRB No. 151 (1997) (Board reversed Regional Director's direction of a mail-ballot election because 80 mile distance between Board's office and employer's facility was insufficient to justify a departure from the normal manual election procedures). The Board's Case Handling Manual provides that "the use of mail balloting, at least in situations where any party is not agreeable to the use of mail ballots, should be limited to those circumstances that clearly indicate the

James Small
December 22, 1997
Page 2

infeasibility of a manual election." (NLRB Case Handling Manual, ¶ 13,360.) Part of the justification noted in the Case Handling Manual is the fact that mail ballots are more likely to result in objections that cannot be as readily resolved as when the voting procedures are carried out in the presence of a Board agent. (*Id.*)

Here, the employer has proposed holding a manual election at two sites and the petitioner has not provided any evidence of infeasibility. See e.g., Shepard Convention Services v. NLRB, 152 LRRM 2471, 2474 (D.C. Cir. 1996) (court held it was improper to order mail ballot election where the union never demonstrated manual voting was infeasible). In Shepard, the proposed manual election was to be conducted at two locations at opposite ends of the City of Atlanta and some of the voters would have been required to travel 20 or 30 minutes to reach a voting poll. (*Id.* at 2474.) Similarly, SDG&E's proposal was to conduct a manual election at two sites (the company's Century Park office in San Diego and the northeast office in Escondido) for voters located at eight different company locations, six of which are within 20 miles of their respective polling place. Moreover, 17 of the 20 expected voters are located at these six company locations.^{1/}

Thus, contrary to the contention in your letter of December 18, 1997, a majority of the unit employees would be traveling 20 miles or less in order to vote in a manual election. Moreover, the decisions cited in your letter, do not support the decision to utilize a mail ballot election because the factual circumstances in those two cases were much different. In London's Farm Dairy, Inc., 323 NLRB No. 186 (1997), the employees worked different schedules with various reporting times throughout the day that would require polling hours to cover substantially all of two days in order to permit each employee to vote. In Reynolds Wheels, Int'l., 323 NLRB No. 187 (1997), the employees had such staggered working shifts that it would require three

^{1/} Employees scheduled to vote at the company's Century Park office include three from beach cities (six mile travel distance); four employees from the metro office (10 miles); three employees from the eastern district office (14 miles); and one employee from the mountain empire office (60 miles). Employees scheduled to vote at the northeast office include three employees assigned at the northeast office (0 miles); three employees at the north coast office (17 miles); one employee at the Ramona office (20 miles); and two employees from the Orange County office (49 miles).

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP.

James Small
December 22, 1997
Page 3

consecutive days of manual voting to accommodate all eligible voters. Under SDG&E's proposal, the election could be conducted on the same day for an hour or two at each location. This proposal does not come close to the difficulties addressed in London's Farm or Reynold's Wheels.

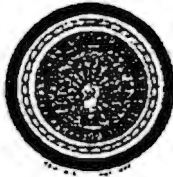
Accordingly, SDG&E requests that you reconsider your decision to conduct a mail ballot election and order a manual election, in accordance with the Board's policies. Thank you very much for your consideration of this request.

Sincerely,


Dana Cephas

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SD1:DCE\FTC\WY\51060425.1

Small
Cahnocal
Union 465

229 W. WASHINGTON STREET, SAN DIEGO, CALIFORNIA 92103-1997 - (619) 297-2875

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS....AFL-CIO

Tuesday 23 December 1997

Stephanie Cahn, Field Attorney
National Labor Relations Board—Region 21
888 South Figueroa Street, 9th Floor
Los Angeles, CA 90017-5449

VIA FACSIMILE TRANSMISSION

Re: Case 21-RC-19862

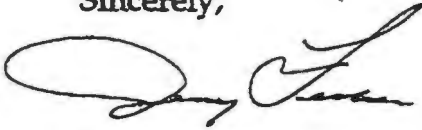
Dear Ms. Cahn:

The Petitioner has just received a copy of the Employer's letter concerning their opposition to a mail ballot. The Petitioner responds that the Region's determination is appropriate in this matter. There are one to three employees in each of the eight Constructions and Operations Districts. Having traveled to most of these districts in my representation of bargaining unit employees of the Company, I can attest to the great distances involved between each of the facilities, and from each of the facilities to a central location. A mail ballot is both practical and reasonable when there are employees scattered across such a large distance. *Labor Relations Expediter*, BNA/LRX 670: 425. The employees in the unit who we have contacted prefer a mail ballot.

Additionally, the Employer has not provided nor demonstrated any actual reasons why they are opposed to the use of a mail ballot in this instance, nor have they shown that the procedure of a mail ballot is an impediment to a fair election process as provided by the Board. The Petitioner's reasons are based on the practical convenience for the Board and all employees involved in this matter. The Employer, conversely, has not demonstrated the efficacy of moving part of the balloting to the Century Park facility—the headquarters of the Labor Relations and Human Resources offices. None of the employees involved in this election work at the Century Park facility. Furthermore, the Employers' proposal of a manual election will still require certain employees to travel up to 120 miles round-trip in order to vote.

In this case, a mail ballot is the only reasonable solution, and the Region correctly exercised its discretion to direct an election as such. Therefore, the Petitioner requests the Region to sustain its original decision to hold a mail ballot in the instant matter. If you have any questions, please give me a call.

Sincerely,



Jerry Fecher
Business Representative

cc: Dana Cephas, Attorney-at-Law

PROOF OF SERVICE

I, the undersigned, declare that I am over the age of 18 years and not a party to the case within. My business address is 229 W. Washington Street, San Diego, California, 92103, San Diego County.

On December 29, 1997, I caused to be served the following documents pertaining to the matter of SAN DIEGO GAS AND ELECTRIC AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 465:

Union/Petitioner Response to Employer's Request for Review of Regional Director to Conduct a Mail Ballot Election

by placing a true copy(ies) of each document into a separate sealed envelope, the original and seven duplicates sent to the first address, and one copy sent to the second address, and one copy to the third address, all via Express Mail next day delivery of the United States Postal Service, addressed as follows:

Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

James Small
Acting Regional Director
National Labor Relations Board--Region 21
888 South Figueroa Street, 9th Floor
Los Angeles, CA 90017-5449

Dana Cephas, Attorney at Law
Sheppard, Mullin, Richter & Hampton
501 West Broadway, 19th Floor
San Diego, CA 92101-3598

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: December 29, 1997

By: Andy Nelson

Q M
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

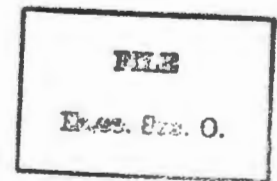
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OUR FILE NUMBER

CWY-59561

WRITER'S DIRECT LINE

(619) 338-6616

December 30, 1997

VIA FEDEX

John J. Toner
Executive Secretary
National Labor Relations Board
1099 - 14th Street, N.W.
Washington, D.C. 20570-0001

Re: San Diego Gas & Electric
Case 21-RC-19862

Dear Mr. Toner:

This letter responds to the Acting Regional Director's letter of December 24, 1997, that was forwarded to the Board. A brief response is warranted to address issues raised by the Acting Regional Director's letter, because it was sent and received after SDG&E submitted its Request for Review.

First, the Acting Regional Director's letter suggests that the burden is on SDG&E to justify a manual election. Specifically, the Acting Regional Director implied that SDG&E had not justified a manual election because it "only" proposed conducting the election at two sites and allegedly "did not describe an appropriate logistical sequence" for the conduct of the election. Board precedent (as set forth in SDG&E's Request for Review) does not require a party to justify a manual election -- manual elections are the default rule. The legal authorities establish that the Regional Director and/or the party objecting to the normal election procedure carry a heavy burden to establish that the manual election is infeasible. They have not come close to sustaining that burden.

SDG&E provided a relatively straightforward response to the Acting Regional Director's request for input (concerning a possible election by mail) because neither the Board nor the petitioner had demonstrated, or even suggested, that a manual

John J. Toner
December 30, 1997
Page 2

ballot would be infeasible. Furthermore, in light of the fact that an election of another unit initiated by the same petitioner was conducted at two SDG&E sites only three months earlier (September 10, 1997), SDG&E believed that it was unnecessary to provide a detailed logistical sequence for the proposed election -- all the parties were obviously familiar with the logistical sequence.

SDG&E is also concerned that the Acting Regional Director has apparently taken into consideration the comments made "by persons who purport to be unit employees of the Employer," claiming a preference for mail ballots. SDG&E objects to the consideration of these unauthenticated communications.

SDG&E thanks the Board for its consideration of the concerns addressed in this letter.

Sincerely,


Dana Cephas

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SD1:DCE\LET\CWY\51060962.1

cc: James F. Small (via FedEx)
Jerry Fecher (via FedEx)



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 21

888 South Figueroa Street, Ninth Floor

Los Angeles, CA 90017-5449

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Resident Office:

555 W Beech St - Suite 302

San Diego, CA 92101-2939

December 24, 1997

Sheppard, Mullin, Richeter & Hampton LLP
Attn.: David Chidlaw, Esquire
501 West Broadway, 19th Floor
San Diego, CA 92101

International Brotherhood of Electrical Workers,
Local 465, AFL-CIO
Attn.: Jerry Fecher, Business Representative
229 West Washington Street
San Diego, CA 92103

Re: San Diego Gas and Electric
Case 21-RC-19862

Gentlepersons:

In a letter dated December 18, 1997, copy attached, I advised the parties that I intended to conduct a mail (postal) ballot election in this matter. The Employer in a facsimile letter dated December 22, 1997, requested that I reconsider my decision to conduct a mail ballot in the above-captioned case. The Employer's request is attached hereto. The Petitioner in a facsimile letter dated December 23, 1997, voiced opposition to the Employer's request and noted support for the use of a mail (postal) ballot. The Petitioner's letter is also attached hereto.

I recognize the cogent arguments presented by the Employer. I clearly understand the appropriateness of the manual ballot concept, and appreciate the Employer's interest in encouraging a full and free exercise of the franchise by all eligible voters.

Let me begin by noting that both parties were solicited for their views on the topic of manual versus mail (postal) ballot election in a letter on December 9, 1997. The parties were also asked to provide proposals for an appropriate logistical sequence for a manual election. The Petitioner in a letter dated December 11, 1997, provided such information while noting that it preferred a mail (postal) ballot. The Employer in a letter dated December

12, 1997 **only** proposed conducting the election at two sites. The Employer did **not** describe an appropriate logistical sequence for the conduct of the election; nor did the Employer suggest whether it was proposing one or two Board agents to conduct the election.

Accepting the Employer's proposal for the conduct of a manual election at two locations would entail: 17 of the 20 employees traveling/driving to vote in the election¹; and utilizing the Employer's Century Park location, which the Petitioner contends houses the Employer's labor relations and human resources offices and where not a single one of the unit employees works.

While not dispositive of whether an election should be a mail (postal) versus manual ballot, this office has been contacted by persons who purport to be unit employees of the Employer. These persons express a view that they would prefer to vote a mail (postal) ballot rather than drive to either proposed polling site suggested by the Employer.

I have carefully considered the Employer's request and the Petitioner's opposition thereto, and the arguments contained in both documents. For the reasons set forth in my letter of December 18, 1997, and for the additional reasons described herein, I believe my decision to conduct a mail ballot in this case is an appropriate exercise of my discretion in this Directed election situation. This letter is to advise that I adhere to my decision to conduct a mail (postal) ballot election in this case.

Inasmuch as the Employer has filed a Request for Review of my decision to conduct a mail ballot, I am forwarding this letter with attachments to the Board.

Very truly yours,



James F. Small
Acting Regional Director

Attachments

cc: Office of Representation Appeals, National Labor Relations Board

¹ Interestingly enough, this same figure, 17, is the number of employees that the Employer contends would travel/drive 20 miles or less to vote in the election. The inverse of the Employer's observation, of course, is that 3 of the employees would be driving in excess of 20 miles (40 miles round trip) under the Employer's proposal. Indeed, one of the employees would be required to travel/drive at least 60 miles (120 miles round trip) to vote.



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December 18, 1997

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International Brotherhood of Electrical Workers,
Local 465, AFL-CIO
Attn.: Jerry Fecher, Business Representative
229 West Washington Street
San Diego, CA 92103

Re: San Diego Gas and Electric
Case 21-RC-19862

Gentlepersons:

I have considered the suggestions of the parties regarding the conduct of the above-referenced election. Simply put, the Employer desires a manual election with two polling locations¹ and the Union desires a mail (postal) ballot election.²

A review of the logistics is in order. There are approximately 20 employees working out of 8 different locations spread across an area of over 80 miles (the distance from San Clemente to El Cajon). The most distant location, San Clemente, is approximately 65 miles from the larger facility in San Diego. Assuming that the Employer is suggesting that we conduct one polling session at the larger facility in San Diego, it is therefore 65 miles from the San Clemente facility to the San Diego facility. It appears that a majority of the unit employees would be traveling in excess of 30 miles to vote, if they travel

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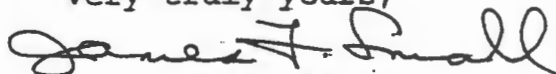
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As for conducting individual polls at all 8 locations, I have reviewed the time necessary to adequately allow a Board agent to travel between the 8 sites. That time is nearly 4 hours, not including the time necessary to conduct each individual polling session. Thus, at a minimum, I would estimate that 8 hours of Board agent time would be involved to conduct a manual election among the unit employees at all 8 sites.

A mail (postal) ballot could be accomplished with a minimal expenditure of Agency resources and no employee would be expected to travel away from his work station to a central polling site. I note that the *National Labor Relations Board Representation Proceedings Casehandling Manual, Part II, 11336*, suggests that mail ballots should be explored where long distances are involved or where eligible voters are scattered. In the instant situation, there are long distances involved and the employees are scattered. I also note that the mail balloting process could begin after close of the Holiday Season, avoiding any disruptions that might arise in the mails, and accommodating the temporary employee absences during the Holiday Season. (In this regard, the Employer has advised this office that nearly all unit employees are not on the job until after the first of the New Year.)

I have carefully considered the positions and preferences of the parties. I have also reviewed the logistics surrounding the conduct of any manual versus mail (postal) election in this matter. I have carefully analyzed and considered these factors, including guidance from the Board's decisions in *London's Farm Dairy, Inc.*, 323 NLRB No. 186; and *Reynolds Wheels International*, 323 NLRB No. 187. Accordingly, I have determined that this election is appropriate to be conducted as a mail (postal) ballot election. Election details will follow.

Very truly yours,



James F. Small
Acting Regional Director

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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CWY-59561

December 22, 1997

VIA FACSIMILE

Mr. James A. Small
Acting Regional Director, Region 21
National Labor Relations Board
Ninth Floor
888 South Figueroa Street
Los Angeles, California 90017-5449

Re: San Diego Gas & Electric and
International Brotherhood of Electrical Workers, Local 465
Case No. 21-RC-19862

Dear Mr. Small:

This letter is in response to your letter of December 18, 1997. Our client, San Diego Gas & Electric, respectfully requests that you reconsider your decision to conduct an election by mail ballot in the above-captioned matter. Board precedent does not support an election by mail ballot here where the parties have not stipulated to such an election and Petitioner has not demonstrated that a manual election would be infeasible.

It is well settled that "under existing Board precedent and policy the applicable presumption favors a manual election, not a mail-ballot election." Willamette Industries, Inc., 322 NLRB No. 151 (1997) (Board reversed Regional Director's direction of a mail-ballot election because 80 mile distance between Board's office and employer's facility was insufficient to justify a departure from the normal manual election procedures). The Board's Case Handling Manual provides that "the use of mail balloting, at least in situations where any party is not agreeable to the use of mail ballots, should be limited to those circumstances that clearly indicate the

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

James Small
December 22, 1997
Page 2

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Here, the employer has proposed holding a manual election at two sites and the petitioner has not provided any evidence of infeasibility. See e.g. Shepard Convention Services v. NLRB, 152 LRRM 2471, 2474 (D.C. Cir. 1996) (court held it was improper to order mail ballot election where the union never demonstrated manual voting was infeasible). In Shepard, the proposed manual election was to be conducted at two locations at opposite ends of the City of Atlanta and some of the voters would have been required to travel 20 or 30 minutes to reach a voting poll. (*Id.* at 2474.) Similarly, SDG&E's proposal was to conduct a manual election at two sites (the company's Century Park office in San Diego and the northeast office in Escondido) for voters located at eight different company locations, six of which are within 20 miles of their respective polling place. Moreover, 17 of the 20 expected voters are located at these six company locations.^{1/}

Thus, contrary to the contention in your letter of December 18, 1997, a majority of the union employees would be traveling 20 miles or less in order to vote in a manual election. Moreover, the decisions cited in your letter do not support the decision to utilize a mail ballot election because the factual circumstances in those two cases were much different. In London's Farm Dairy, Inc., 323 NLRB No. 186 (1997), the employees worked different schedules with various reporting times throughout the day that would require polling hours to cover substantially all of two days in order to permit each employee to vote. In Reynolds Wheels, Int'l, 323 NLRB No. 187 (1997), the employees had such staggered working shifts that it would require three

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SHEPPARD, MULLIN, RICHTER & HAMPTON LLP.

James Small
December 22, 1997
Page 3

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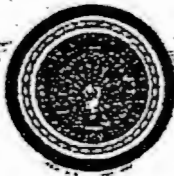
Accordingly, SDG&E requests that you reconsider your decision to conduct a mail ballot election and order a manual election, in accordance with the Board's policies. Thank you very much for your consideration of this request.

Sincerely,


Dana Cephas

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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Small
CahnLocal
Union 465

229 W. WASHINGTON STREET, SAN DIEGO, CALIFORNIA 92103-1997 • (619) 297-2875

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS....AFL-CIO

Tuesday 23 December 1997

Stephanie Cahn, Field Attorney
National Labor Relations Board—Region 21
888 South Figueroa Street, 9th Floor
Los Angeles, CA 90017-5449

VIA FACSIMILE TRANSMISSION

Re: Case 21-RC-19862

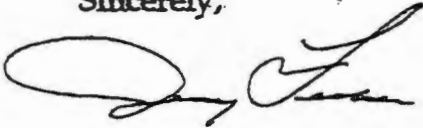
Dear Ms. Cahn:

The Petitioner has just received a copy of the Employer's letter concerning their opposition to a mail ballot. The Petitioner responds that the Region's determination is appropriate in this matter. There are one to three employees in each of the eight Construction and Operations Districts. Having traveled to most of these districts in my representation of bargaining unit employees of the Company, I can attest to the great distances involved between each of the facilities, and from each of the facilities to a central location. A mail ballot is both practical and reasonable when there are employees scattered across such a large distance. Labor Relations Expediter, BNA/IRX 670-425. The employees in the unit whom we have contacted prefer a mail ballot.

Additionally, the Employer has not provided nor demonstrated any actual reasons why they are opposed to the use of a mail ballot in this instance, nor have they shown that the procedure of a mail ballot is an impediment to a fair election process as provided by the Board. The Petitioner's reasons are based on the practical convenience for the Board and all employees involved in this matter. The Employer, conversely, has not demonstrated the efficacy of moving part of the balloting to the Century Park facility, the headquarters of the Labor Relations and Human Resources offices. None of the employees involved in this election work at the Century Park facility. Furthermore, the Employers' proposal of a manual election will still require certain employees to travel up to 120 miles round-trip in order to vote.

In this case, a mail ballot is the only reasonable solution, and the Region correctly exercised its discretion to direct an election as such. Therefore, the Petitioner requests the Region to sustain its original decision to hold a mail ballot in the instant matter. If you have any questions, please give me a call.

Sincerely,



Jerry Fecher
Business Representative

cc: Dana Cephas, Attorney-at-Law

10/88

UNION/PETITIONER RESPONSE TO EMPLOYER'S REQUEST FOR REVIEW
OF DECISION OF REGIONAL DIRECTOR



San Diego Gas & Electric Company
Employer

and

International Brotherhood of Electrical
Workers, Local Union 465
Petitioner

Case No. 21-RC-19862

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David Moore, Business Manager / Financial Secretary
Jerry Fecher, Business Representative
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Presented to the National Labor Relations Board on
24 December 1997

SUMMARY OF ARGUMENT

A. The Regional Director's Decision is correctly based on the record, and no evidence exists that any part of that decision can be deemed as "clearly erroneous."

B. The Regional Director's Decision does not deviate from established board precedent.

Conclusion: Because the employer has failed to show any compelling reasons why review is warranted, their request as such must be denied in full.

I. BACKGROUND

The Petition in the instant case was filed on October 30, 1997, and a pre-election hearing was held on November 13, 1997. The outstanding issue is the appropriateness of the bargaining unit. The petitioned-for unit contains 19 employees, employed in the Employer's Construction and Operations ("C&O") Departments. The employer sought to attach a variety of non-C&O classifications to the unit, and after the hearing, the Regional Director of Region 21 determined that the appropriate unit consisted of the original petitioned-for unit, with the addition of a Dispatch Assistant--Frances Evans--who has interaction with the C&O Department, and works in one of the C&O Districts.

On December 17, 1997, the Employer filed a Request for Review of the Regional Director's Decision, seeking to include those additional classifications which the Regional Director excluded.¹ The Petitioner has not sought review of the Regional Director's decision.

The Employer has not asserted any "compelling reasons" for the Board to review the decision of the Regional Director. Under § 102.67 of the Board's Regulations, the acceptable reasons for review are outlined below:

* * *

¹ "Decision and Direction of Election," attached as Exhibit 1.

1 (c) The Board will grant a request for review only where compelling reasons ex-
2 ist therefor. Accordingly, a request for review may be granted only upon one or
3 more of the following grounds:

4
5 (1) That a substantial question of law or policy is raised because of (i) the ab-
6 sence of, or (ii) the departure from, officially reported Board precedent.

7
8 (2) That the regional director's decision on a substantial factual issue is clearly
9 erroneous on the record and such error prejudicially affects the rights of a party.

10
11 (3) That the conduct of the hearing or any ruling made in connection with the
12 proceeding has resulted in prejudicial error.

13
14 (4) That there are compelling reasons for reconsideration of an important Board
15 rule or policy.

16
17 * * *

18
19 The Employer has sought review under subsections (1) and (2), yet they
20 merely assert that "the appropriate unit *should* include ten additional employees
21 who have a substantial community of interest with the company's other dis-
22 patchers." (Employer's Request for Review, 1-2, emphasis added.) The Em-
23 ployer has not shown that the Regional Director has deviated from established
24 Board precedent, and they have not shown that the Regional Director's decision
25 on a substantial factual issue was clearly erroneous.

26 The National Labor Relations Act does not require that a bargaining unit
27 be the most appropriate or the only appropriate unit, but merely "an appropriate
28 unit." *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988). As stated in the Re-
29 gional Director's decision, "the Board looks 'first to the unit sought by the peti-
30 tioner. If it is appropriate, [the] inquiry ends. If, however, it is inappropriate,

1 the Board will scrutinize the Employer's proposals.' *Dezcon, Inc.*, 295 NLRB 109,
2 111 (1989)."

3 In the instant case, the employer sought to attach classifications in differ-
4 ent departments and locations from the company's Construction and Operations
5 Department ("C&O.") These individuals are as follows:

6
7 2 Gas Utility Clerks--Miramar (6875 Consolidated Way)
8 1 Crew Dispatcher--Kearny (Overland Drive)
9 1 Fleet Dispatcher--Kearny
10 1 Operations Assistant--Kearny
11 2 Vehicle Dispatchers--Electric Building (101 W. Ash Street)
12 3 Meter Dispatch Assistants--(miscellaneous locations)
13 1 Construction Services Dispatcher--Century Park (8306 Century Park Court)
14

15 Each of the above employees work in non-C&O locations and do not in-
16 teract for the most part with the employees in the petitioned-for unit. The only
17 exception is Frances Evans--a dispatch assistant who works out of the Beach
18 Cities C&O District, and interacts with the C&O unit. The Regional Director in-
19 cluded Ms. Evans in the unit, and the Petitioner now does not seek her exclu-
20 sion. The rest of the employees, however, were properly excluded by the Re-
21 gional Director in the instant case. The Regional Director's decision states: "the
22 facts clearly show that most of the additional employees the Employer seeks to
23 add to the proposed unit do not share a community of interest with the C&O
24 dispatchers. The other dispatchers which the employer seeks to include, work in

1 a variety of departments and at a variety of facilities." ("Decision and Direction
2 of Election," p. 12.)

3 To add these other individuals into the unit would dilute the strong inter-
4 action and departmental cohesiveness of the unit. Many of the individuals
5 sought for by the employer have no interaction at all with the unit determined
6 appropriate by the Regional Director.

8 II. ANALYSIS

9
10 Historically, the Board has used a number of factors to determine what
11 constitutes an appropriate unit. Such factors include, but are not limited to:
12 mutuality of interest (*Continental Baking Co.*, 99 NLRB 777 (1952).), any history of
13 collective bargaining (*Murray Co. of Texas, Inc.*, 107 NLRB 1571 (1954).), and the
14 desires of employees. In the instant case, there exists no history of collective
15 bargaining, but there exists a mutuality of interest among the C&O Dispatchers,
16 Dispatch Assistants, and District Clerks, as stipulated by the Petitioner and the
17 Employer.

18
19 A. The Regional Director's Decision is correctly based on the record, and no
20 evidence exists that any part of that decision can be deemed as "clearly erro-
21 neous."

1
2 The record is clear that the C&O group have similar duties and often co-
3 ordinate with other C&O districts, as opposed to the non-C&O employees the
4 Employer seeks to attach. (Tr. 153: 10-12.)² Dispatcher Gloria Zuniga testified
5 that she interacts with other C&O districts, “from time sheets we have crews that
6 work trouble one end of the county to the other end, we interact with time
7 sheets, who the crew was, who was on the crew, all kinds of set up.” (Tr. 153:
8 14-17.)

9 Moreover, James Valentine, the Manager of the Orange County C&O
10 District, testified that a dispatcher could go to another C&O district to work,
11 since the duties are similar. (Tr. 106: 12-17.) The duties are similar, from dis-
12 patching crews to organizing time sheets. (Tr. 103: 14-19; 151; 14-16.) Ms. Zu-
13 niga testified that she worked with the C&O District Clerk in Orange County
14 (Joanne Borden). (Tr. 153: 3-9.)

15 The Dispatchers, District Clerks, and Dispatch Assistants all work out of
16 C&O Districts and they have similar pay grades, ranging from 9 to 11. (Tr. 2-7.)
17 Given all of this connectivity, the other groups from different departments do
18 not share this level of mutuality of interest, and therefore the petitioned-for unit
19 forms an appropriate unit under the NLRA.

² Applicable sections of the hearing transcript are attached as Exhibit 2.

1 However, despite the above, the Employer argues the following facts in
2 its request for review, with regard to each of the individuals they wish to attach
3 to the unit:
4

5 **(a) Meter Dispatch Assistants:** The Employer states that they “use a radio, tele-
6 phone, and SDG&E’s data systems to assign work to meter readers and reassign
7 work to permanent and on-call employees.” This assertion is true, but it fails to
8 show any interaction with the those in the petitioned for-unit. The record is
9 clear that there is none, and that they work out of a different non-C&O location.

10 The two Meter Dispatch Assistants work out of the Company’s two Meter
11 Reading centers in the Grantville section of San Diego (Metro Meter Reading,
12 6154 Mission Gorge Road) and in San Marcos. (Tr. 32: 18-19; 39: 10-11.) The
13 Supervisor of Metro Meter Reading, Margaret Florence, testified that these Meter
14 Dispatch Assistants do not interact with the C&O group “in the normal course of
15 daily work.” (Tr. 40: 17-21.) The Meter Dispatch Assistants largely perform
16 duties related to the Meter Readers in the Company, such as loading the hand-
17 held processors for the meter readers, maintaining computers, and talks on a
18 two-way radio with the Meter Readers. (Tr. 33: 14-25; 34: 1-4.)

19 Additionally, these two Meter Dispatch assistants work out of a different
20 department and a different location from the C&O group. (Tr. 42: 3-5.) Dis-

1 patcher Gloria Zuniga testified specifically that she does not interact with the
2 dispatchers out of the meter reading group. (Tr. 154: 13-15.)

3 Therefore, the Employer has not asserted that the Regional Director's de-
4 cision on this substantial factual issue is "clearly erroneous on the record." In
5 fact, the record is clear as to their exclusion.

6
7 **(b) Crew Dispatcher (Kearny):** The Employer argues that this individual
8 "spends 60 to 70 percent of his time dispatching seven 2-man crews to perform
9 relay work." What their statement does not reveal, however, is that the crews
10 dispatched work in a completely different department in the Company (electric
11 construction and maintenance) and in a different location. They also argue that
12 this individual performs duties through a personal computer system. This sys-
13 tem, however, differs from the DPSS system used to dispatch from the C&O De-
14 partment.

15 Frank Johnson, supervisor of the assistant protection maintenance section
16 supervises employees in the Company's department entitled "electric construc-
17 tion and maintenance." (Tr. 43: 20-24.) This department is a wholly separate
18 department from the C&O department within the Company. (Tr. 47: 12-16.)
19 Mr. Johnson further admitted that the Crew Dispatcher does not interact on a
20 regular basis with the C&O group in the petitioned-for unit. (Tr. 47: 1-7.) Also,

1 the Crew Dispatcher--at a pay grade 12--earns a higher pay of scale than anyone
2 else in the petitioned-for unit, which range from 9-11. (Tr. 44: 9-10; 157: 2-7.)

3 Dispatcher Gloria Zuniga testified that the Crew Dispatcher is not one of
4 the classifications with which she interacts. (Tr. 151: 21-25; 152: 1-5.) The Crew
5 Dispatcher, with a placement in a different department and location, does not
6 interact on a regular basis with the C&O employees in the petitioned-for unit.
7 They also earn a higher pay grade compared to those in the C&O group. There-
8 fore, a community of interest does not exist so as to require the inclusion of the
9 Crew Dispatcher from Kearny. Therefore, the Regional Director correctly ex-
10 cluded this individual from the unit, and the Employer has not shown that the
11 Regional Director's decision in this issue was "clearly erroneous."

12
13 **(c) Gas Utility Clerks:** The Employer asserts that these employees "spend 25 to
14 30 percent of their time performing dispatching duties by dispatching regulator
15 men and meter repairmen." This statement is true, but these individuals work
16 in a different location, they dispatch non-C&O crews and they do not interact
17 regularly with the C&O group.

18 The two Gas Utility Clerks work out of the Company's Miramar facility.
19 Their work location is away from a C&O District, and they are in a different de-
20 partment within the Company. (Tr. 57: 11-13; 63: 8-10.) These Gas Utility

1 Clerks have hardly any interaction with the C&O Dispatchers, District Clerks,
2 and Dispatch Assistants. (Tr. 63: 1-4.)

3 Gloria Zuniga testified that in her job as a dispatcher, the Gas Utility
4 Clerks are not a position with which she interacts. (Tr. 151: 21-25; 152: 1-5.)
5 Additionally, Richard Lifer, Pipeline Services Supervisor, stated in testimony
6 that the Gas Utility Clerks do not interface with the C&O dispatchers "on a nor-
7 mal day-to-day basis." (Tr. 63: 3-5.) Such interaction is different than the inter-
8 action which exists within the petitioned-for C&O group. Ms. Zuniga testified
9 that she interacts with all of the C&O Districts, and gave the example of her
10 work with District Clerk Joanne Borden, out of Orange County. (Tr. 153: 3-12.)

11 The Gas Utility Clerks have scant interaction with the Gas Utility Clerks,
12 they work out of a non-C&O location, and work in a different department with
13 the Company. Thus, the Regional Director correctly found that they lack a
14 community of interest which would necessitate their inclusion. The Employer
15 has not shown that the Regional Director's decision on this issue was "clearly
16 erroneous."

17
18 **(d) Construction Services Dispatcher:** The Employer asserts in its Request for
19 Review that this individual "uses the Company's DPSS system and the telephone
20 to dispatch servicemen in response to work requests." This is true, however, the
21 persons dispatched work in a non-C&O department and location, as does the

1 Construction Services Dispatcher. This employee also works in a different loca-
2 tion and does not interact with those in the C&O group.

3 Robert Vorrasso, the Manager of Construction Services, testified that
4 Gwendolyn Murphy is a Construction Services Dispatcher in his department, at
5 the Company's Century Park location and she has responsibilities for coordinat-
6 ing tree-trimming with the Company's contractors, sets up planned outages, and
7 submits requests for city permits and easements. (Tr. 112: 11-12; 113: 3-19.) In
8 her job, Ms. Murphy operates independent of the C&O Districts, and Mr.
9 Vorrasso testified that Ms. Murphy interacts very rarely, "if at all, on a regular
10 business level" with the C&O group. (Tr. 111: 18-21.) Moreover, Mr. Vorrasso
11 testified that Ms. Murphy, in the normal course of business, does not interact
12 with any dispatchers within the Company. (Tr. 111: 24-25; 112: 1.) Dispatcher
13 Gloria Zuniga testified that, in the course of her job duties she does not interact
14 with her in any manner. (Tr. 152: 11-15.) Ms. Zuniga also testified that she has
15 been assigned to that department in 1989 for a short period and that when she
16 was in that department, she did not do the same dispatching as she does now.
17 (Tr. 152: 20-25; 153: 1-2.) Additionally, James Valentine, the Manager of the Or-
18 ange County C&O District testified that his C&O dispatcher does not have any
19 contact with construction services (i.e., Ms. Murphy). (Tr. 109: 17-20.) And Fred
20 Flihan, Manager of the Eastern C&O district testified that his department will
21 contact the tree trimming contractor ("Asplundh") directly, instead of contacting
22 the Construction Services Dispatcher (Ms. Murphy.) (Tr. 131: 9-19.)

1 Since the Construction Services Dispatcher is in a different location and
2 department, has different duties, and no interaction with the C&O group, this
3 individual does not have a community of interest with that group. The Regional
4 Director correctly excluded this individual from the unit, and the Employer has
5 failed to show that the Regional Director's decision as such is clearly erroneous.

6
7 **(e) Fleet Dispatcher and Fleet Operations Assistant:** The Employer asserts that
8 these individuals work out of the "Fleet Services" department (non-C&O) and
9 that they "dispatch work to equipment operators and field mechanics." There-
10 fore, they are in a different department and dispatch work to employees in the
11 fleet services department. They rarely interact with the C&O group.

12 Christopher Lyons, the Manager of Fleet Operations, testified that the
13 Fleet Dispatcher and the Fleet Operations Assistant work out of the Company's
14 Miramar facility, which is different from the locations of the C&O districts in the
15 petitioned-for unit. (Tr. 117: 4-7.) Additionally, the Fleet Department is a sepa-
16 rate department from the C&O Department within the Company.

17 Because they are in a different department, work out of a different loca-
18 tion for a different supervisor, and do not have the level of interaction which
19 exists among the C&O group itself, the Fleet Dispatcher and the Fleet Operations
20 Assistant should be excluded from the unit. They do not share a community of
21 interest with the C&O individuals in the original petitioned-for unit. Therefore,

1 the Regional Director correctly excluded them from the unit, and the Employer
2 has not presented evidence to show that the Regional Director's decision with
3 respect to this issue is clearly erroneous.

4
5 (f) **Vehicle Dispatchers:** The Employer asserts that these individuals work in
6 the fleet department (non-C&O) and that they "dispatch company vehicles on
7 the basis of work orders." This is true, but their duties differ largely from the
8 C&O dispatchers who dispatch workers on crews, instead of vehicles. The Ve-
9 hicle dispatchers also work in a different department of the Company and a dif-
10 ferent location. They have no regular interaction with the C&O group.

11 Christopher Lyons also testified that, as Manager of Fleet Operations, he
12 oversees two Vehicle Dispatchers who work out of the Company's Headquarters
13 in Downtown San Diego (the "Electric Building.") (Tr. 120: 6-10.) Mr. Lyons
14 stated that these individuals "oversee assignments of the pool vehicles that are
15 domiciled both at the electric building and at Century Park. They process re-
16 quests for transportation for vehicles from the staff at both of those locations, if
17 somebody needs a temporary vehicle. They assign that vehicle. They also over-
18 see the vehicle assignments for the car pool program that the Company adminis-
19 ters and the--they assist with parking at the electric building." (Tr. 120: 12-19.)
20 Absent from this description are the typical duties of the C&O dispatchers, who
21 dispatch mostly people instead of cars, and coordinate the construction crews for

1 their Districts and sometimes others. The C&O group also does some timekeep-
2 ing. (Tr. 164: 5-10.) Additionally, Mr. Lyons testified that the Vehicle Dispatch-
3 ers do not dispatch crews or servicemen. (Tr. 122: 20-23.)

4 The Vehicle Dispatchers work in a different department from C&O, and
5 Mr. Lyons testified that, to his knowledge, these individuals do not interact with
6 the C&O group. (Tr. 122: 24-25; 123: 1.) Dispatcher Gloria Zuniga testified to
7 who she interacts with in her job duties, and the Vehicle Dispatchers were not in
8 her description. (Tr. 151: 21-25; 152: 1-5.)

9 For the above reasons, the Vehicle Dispatchers lack a community of inter-
10 est with the C&O petitioned-for unit, and therefore the Regional Director was
11 correct in excluding them.

12
13 In each of the above sections, the Employer has failed to prove that the
14 Regional Director's decision was clearly erroneous with respect to factual de-
15 terminations on the record. The record is clear that the additional employees
16 mentioned above do not share a community of interest with the appropriate unit
17 as determined by the Regional Director.

18
19 **B. The Regional Director's Decision does not deviate from established board**
20 **precedent.**

1 The Employer's citations of board decisions such as in *A.P.R.A. Fuel Oil*
2 *Buyers Group, Inc.* 308 NLRB 480 (1992) and *Northern Virginia Solid Waste Collec-*
3 *tion Dist. of Browning Ferris, Inc.*, 275 NLRB No. 49 (1977) are irrelevant to the ap-
4 propriateness of the unit in the instant case. In each of those cases, dispatchers
5 were added to units different from the one in the instant case. The Employer
6 centers on the singular duty of dispatching. The real question, however, must
7 focus on whether these additional employees share a sufficient community of
8 interest with the instant unit to warrant their inclusion.

9 The Regional Director's Decision correctly followed a community of in-
10 terest determination, as per established Board precedent. As stated in that deci-
11 sion:

12 "Many considerations enter into a community of interest determination. The
13 petitioner's desire for a unit, *Marks Oxygen Co.*, 147 NLRB 228 (1964); the degree
14 of functional integration, *ACL Corp. d/b/a Atlanta Hilton & Towers*, 273 NLRB 87
15 (1984); the nature of employee skills and functions, *Phoenician*, 308 NLRB 826
16 (1992); common supervision, *Harron Communications*, 308 NLRB 62 (1992); inter-
17 changeability and contact among employees, *Associated Milk Producers*, 250 NLRB
18 1407 (1970); wages and fringe benefits, *Allied Gear & Machine Co.*, 250 NLRB 679
19 (1980); and work situs, *Kendall Co.*, 184 NLRB 847 (1970). All of these factors
20 must be weighed when determining community of interest." ("Decision and Di-
21 rection of Election," p. 10.)
22

23 As can be readily ascertained from the record, when one applies the
24 above factors to the instant case, the Regional Director correctly determined an
25 appropriate bargaining unit, and in no way deviated from established board
26 precedent.

1 Also, the Employer attempted to argue in its Request for Review that
2 there exists a system-wide preference for units, and yet they desire a unit of 30
3 employees (as opposed to the original petitioned-for 19). These 30 individuals
4 do not constitute a system-wide unit. In fact, the Petitioner currently represents
5 approximately 1500 employees of the Employer in classifications such as Line-
6 man, Meter Readers, Store Room Employees, and Meter Testers.

7 Moreover, the system-wide units outlined in cases such as *Baltimore Gas &*
8 *Electric*, 206 NLRB 199 (1973), are merely a preference asserted in those cases.
9 The ultimate question posited by the inquiry into a bargaining unit is its appro-
10 priateness. NLRA § 9(b). In this case, the Employer has not shown that the
11 Board has deviated from established Board law and precedent. Therefore, no
12 compelling reasons exist for the overturning of the Regional Director's decision.

13 14 15 III. CONCLUSION

16
17 The Regional Director's Decision determined an appropriate unit under
18 the National Labor Relations Act. The Employer has failed to show any compel-
19 ling reasons why the Regional Director's decision should be overturned. The
20 Employer has not shown that the Regional Directors decision was "clearly erro-
21 neous" with respect to a decision on a substantial factual issue. Nor have they

1 provided any evidence of deviation from established Board precedent. For these
2 reasons, the Petitioner submits that their request for review must be denied in
3 full.

4
5
6 Respectfully submitted,

7
8 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 465
9

10 
11 _____

12 Jerry Fecher, Business Representative

13
14 David A. Moore, Business Manager/Financial Secretary
15

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

SAN DIEGO GAS & ELECTRIC¹

Employer

and

Case 21-RC-19862

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
LOCAL 465, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was conducted before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The Employer's name appears as amended at the hearing.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All dispatchers, dispatch assistants, and district clerks employed by the Employer in its construction and operations districts, at the following facilities: Mountain Empire District, Pine Valley, California; Eastern District, El Cajon, California; Metro District, 701 33rd Street, San Diego, California; Beach Cities District, 4848 Santa Fe Street, San Diego, California; North Coast District, Carlsbad, California; Northeast District, Escondido, California; Orange County District, San Clemente, California; and the Ramona Satellite Office, Ramona, California; excluding all other employees, clerical employees, professional employees, guards and supervisors as defined in the Act.

The Employer is a utility company engaged in the business of providing gas and electrical services in San Diego and Orange Counties, California. The Employer operates from numerous facilities and its operations are broken down into numerous districts and departmental units. Certain of the Employer's employees are covered by collective-bargaining agreements, others are not.

The Petitioner seeks a unit consisting of all dispatchers, dispatch assistants, and district clerks who work in

the Employer's Construction and Operations districts ("C&O").² The Employer contends that the unit³ sought by the Petitioner is not appropriate for the purposes of collective bargaining because it does not include the following employees: two Gas utility clerks -- Gloria Hinzo and Laura Zorrota -- who work at the Employer's Miramar facility; one crew dispatcher -- Jim Fruchae, one fleet dispatcher (name unknown), and one operations assistant (name unknown), all of whom work at the Employer's Kearny facility; two vehicle dispatchers -- Gloria Ortega and Tim _____⁴ who work at the Employer's Ash Street facility; three meter dispatch assistants: Diana Rolston, who works at Meter Service Metro; Tracy Hollingsworth, who works at Meter Service North; and Frances Evans, who works at the Beach Cities C&O District; and finally, Gwendolyn Murphy, who works out of the construction

² The Employer has seven C&O districts and one C&O satellite office; Mountain Empire-Pine Valley, California; Eastern-El Cajon, California; Metro-701 33rd Street, San Diego, California; Beach-4848 Santa Fe Street, San Diego, California; North Coast-Carlsbad, California; Northeast-Escondido, California; Orange County-San Clemente, California; and the Ramona Satellite Office-Ramona, California.

³ The parties stipulated that all of the dispatchers and dispatch assistants at the C&O districts, as well as certain of the district clerks, should be included in any unit found to be appropriate. This stipulation covers 11 dispatchers (names unknown), two dispatch assistants (names unknown), and four district clerks-Alice Baker, Dawn Cole, Bob Fox, and Gabrielle Villa. In its brief, the Employer attempts to back off from this stipulation by saying that, if the Employer's broadened unit is found not appropriate, the stipulated group may not be appropriate because it encompasses many different offices with many different supervisors. The Employer, however, has not withdrawn from the stipulation. The Employer has also presented no evidence regarding the supervision of the stipulated group. Accordingly, I find that these 17 employees in the agreed upon classifications shall be included in the Unit.

⁴ The record does not reveal Tim's last name. Hereinafter he is referred to simply as "Tim."

services department in the Century Park facility.⁵ The Employer also argues that two of the C&O district clerks--Joanne Bordon and Sharon Cardenas--should be excluded from the unit because they do not share a community of interest with the other dispatchers.

The C&O dispatchers and dispatch assistants ("C&O Dispatchers") are broken down into three categories: overhead dispatchers; underground dispatchers, and gas dispatchers. All three categories have similar duties and are cross-trained so that each can perform the other's duties.⁶ The C&O dispatchers' duties are also similar from district to district; little trouble would exist were a C&O dispatcher to work at a different district. The C&O dispatchers also interact among each other if work crews are sent to a different district. The C&O dispatchers are apparently supervised within their particular district in that they do not share common supervision.

The C&O dispatches receive work orders over the Employer's DPSS system, coordinate the necessary personnel and equipment resources, schedule the work, and keep records regarding the scheduled work. In coordinating the necessary resources, the C&O dispatchers sometimes interact with other dispatchers, including the Fleet dispatchers. The work crews are generally dispatched via the computerized DPSS system, with the

⁵ The parties agree that all of the employees in question are in pay grades 8-12, work a set schedule, have essentially the same benefits, and are subject to all of Employer's normal personnel policies.

⁶ Apparently, some C&O dispatchers perform more than one type of dispatching. Dispatcher Gloria Zuniga testified that she dispatched both overhead and underground crews.

work orders being entered into the system by either the C&O dispatchers or supervisors. However, the crews are sometimes dispatched by radio. C&O dispatcher Zuniga testified that she spends 25-30 percent of her day directly dispatching crews by radio.⁷

The C&O district clerks are essentially relief employees. They fill in for dispatchers or other clerical employees who are on vacation or otherwise indisposed. While filling in for dispatchers, they perform the same functions as the vacationing dispatcher. The district clerks spend anywhere between 10-50 percent of their time filling in for C&O dispatchers.

The Employer's two gas utility clerks ("gas clerks") work in the gas operations department and are supervised by Pipeline Services Supervisor Richard Lifer. Both gas clerks work at the Employer's Miramar facility. None of the C&O dispatchers work out of this facility.

Gas clerk Gloria Hinzo spends about 25 percent of her time dispatching pipeline operations crews. The remainder of her time is spend on routine clerical duties. She also assists in preparing a route sheet for the crews. Hinzo dispatches these crews by radio or telephone, not through the DPSS system. Hinzo does not take calls from any of the districts but occasionally talks with outside customers. She has no interaction with the C&O dispatchers. Hinzo is trained to backup the other gas clerk,

⁷ However, Metro C&O Manager Michael McNabb testified that C&O Dispatchers only spend about 10 percent of their time on the radio.

Laura Zorrota, but is not trained to perform any other dispatch functions, including those of the C&O dispatchers.

Gas Clerk Laura Zorrota dispatches crews who perform commercial meter sets. Zorrota receives orders for setting or updating field gas meter sets, then assigns the set to a crew. If the crew discovers a gas leak while doing a meter set, the crew could either have Hinzo or Zorrota call a C&O dispatcher or could call the C&O dispatcher themselves. However, the crews repair 99 percent of the leaks themselves; the last time a C&O dispatcher was contacted because of a leak was at some point less than 3 years ago.⁸ Other than this potential gas leak problem, Zorrota also does not interact with the C&O dispatchers.

Crew Dispatcher Jim Fruchae works at the Employer's Kearny facility. No C&O dispatchers work at this facility. Fruchae is supervised by Frank Johnson, the assistant protection maintenance section supervisor. This section is part of the Employer's electrical construction and maintenance department. Fruchae spends 60-70 percent of his time dispatching seven Kearney based relay crews; the remainder of his time is taken up by timekeeping responsibilities. Fruchae dispatches via a computer system unique to the Kearney facility; he does not use DPSS. The section foremen determine the composition of the crews then tell Fruchae which crews are available. The foremen often reschedule the crews after Fruchae schedules them. Fruchae does not interact with the C&O dispatchers. However, in emergency

⁸ Lifer could not pinpoint the time any more accurately than this.

occasions such as a storm, one of Fruchae's crews may be dispatched by a C&O dispatcher.'

Four dispatchers are supervised by Christopher Lyons, manager for fleet operations. Two of the dispatchers, the fleet dispatcher and the fleet operations assistant, work out of the Employer's Miramar facility. These two dispatchers receive orders from either the C&O dispatchers or C&O foremen for equipment and equipment operators. They then plan and assign the operators' work. They also dispatch field mechanics. Their dispatching is done via radio; they do not appear to use DPSS.

Lyons also supervises two vehicle dispatchers--Gloria Ortega and Tim. The vehicle dispatchers work at the Employer's Ash Street facility. No C&O dispatchers work at this facility. The vehicle dispatchers do not dispatch crews. They also have no interaction with the C&O dispatchers.

The Employer employs three dispatchers in its meter services department. Dispatch Assistant Diana Rolston works at the Employer's facility located at 6145 Mission Gorge Road, San Diego, California. No C&O dispatchers work at this facility. Rolston is supervised by Margaret Florence, supervisor of metro meter reading. Rolston's duties revolve around hand-held meter reading processors. She loads, maintains, and enters information into the processors. She does not schedule routes. However, she can reschedule routes in the event of illness or vacation, or if

⁹ This has not happened for some time. Johnson testified it may have happened last year but definitely not this year. The last occurrence was apparently the subject of a union-filed grievance.

a regularly scheduled route was not completed the previous day. In performing her dispatch duties, Rolston uses two computer systems, CISCO and MERMS. Rolston does not normally interact with C&O dispatchers.

Dispatch Assistant Stacy Hollingsworth works out of the Employer's Northern Meter facility in San Dimas, California. No C&O dispatchers work out of this facility. She is supervised by Steve Krebs. Apparently, Hollingsworth performs the same duties as Rolston.¹⁰

Dispatch Assistant Frances Evans works from the Beach Cities district office. C&O dispatchers work at this facility. Evans is supervised by David Lowe, manager of Metro Meter Services. Evans dispatches four electricians who wire and set electrical meters in new construction. These four electricians work from the beach cities district, the eastern district in El Cajon, California, the northeast district in Escondido, California, and the north coast district in Carlsbad, California. C&O dispatchers work at all of these offices. In dispatching the electricians, Evans uses DPSS, another system called SORT, and a radio. Evans coordinates meter installation with the C&O dispatchers. Further, Evans used to work with the C&O dispatchers at the north coast district.¹¹

¹⁰ The only testimony presented regarding Hollingsworth was from Margaret Florence. She testified that Hollingsworth performs the same job as Rolston.

¹¹ Lowe believes, but does not know for sure, that Evans used to fill in for C&O Dispatchers from time to time when she worked at North Coast. Evans did not testify.

Dispatcher Gwendolyn Murphy works at the Employer's Century Park facility. No C&O dispatchers work at this facility. Murphy is supervised by Robert Vorrasso, manager of construction services. Murphy issues orders to servicemen for resets and re-lights. She also handles "Graffiti" orders and some tree-trimming orders. However, most tree-trimming orders go directly from the ordering district to the individual tree-trimming contractors, bypassing Murphy. Murphy does work with DPSS but interacts with the dC&O dispatchers rarely, if at all. She also does not interact with the other dispatchers described herein.

The primary issue here is whether the unit sought by the Petitioner is appropriate for collective bargaining. In making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine whether the unit sought is an appropriate unit. P.J. Dick Contracting, 290 NLRB 150 (1988). In so doing, the Board looks "first to the unit sought by the petitioner. If it is appropriate, [the] inquiry ends. If, however, it is inappropriate, the Board will scrutinize the Employer's proposals." Dezcon, Inc., 295 NLRB 109, 111 (1989).

In the present case, the Employer argues that the only appropriate unit must include those categories noted above, in addition to the categories noted in the petitioned-for unit, arguing essentially that the above-noted classifications of employees share such a strong community of interest with the unit employees so as to mandate their inclusion. In addition, the Employer avers that two unit employees should be excluded because

they do not share a community of interests with the unit employees.

Many considerations enter into a community of interest determination. The petitioner's desire for a unit, Marks Oxygen Co., 147 NLRB 228 (1964); the degree of functional integration, ACL Corp. d/b/a Atlanta Hilton & Towers, 273 NLRB 87 (1984); the nature of employee skills and functions, Phoenician, 308 NLRB 826 (1992); common supervision, Harron Communications, 308 NLRB 62 (1992)¹²; interchangeability and contact among employees, Associated Milk Producers, 250 NLRB 1407 (1970); wages and fringe benefits, Allied Gear & Machine Co., 250 NLRB 679 (1980); and work situs, Kendall Co., 184 NLRB 847 (1970). All of these factors must be weighed when determining community of interest, no one factor can predominate. See, e.g., Brand Precision Services, 313 NLRB 657 (1994).

The Employer first argues that District Clerks Joanne Warden and Sharon Cardenas should be excluded because they lack a community of interest with the unit employees. McNabb testified that his district clerk spends about 50 percent of his time filling in for the dispatchers. However, Orange County C&O Manager James Valentine testified that his district clerk, Joanne Warden, only spends about 10 percent of her time dispatching. Further, eastern district C&O Manager Frederick Flihan testified that he has two district clerks, Alice Baker and Sharon Cardenas. Baker spends about 20 percent of her time dispatching; Cardenas

¹² Conversely, different supervision is not a per se basis for excluding employees from an appropriate unit. Texas Empire Pipeline Co., 88 NLRB 631 (1950).

spends about 15 percent of her time dispatching. The Employer has stipulated that Baker belongs in any appropriate unit but seeks to exclude both Warden and Cardenas. The only apparent basis for their proposed exclusion is that they spend a smaller amount of time dispatching. The difference between Baker's 10 percent and the 10-15 percent of Warden and Cardenas is negligible. Other than the amount of time spent dispatching, the Employer has not produced any evidence showing that Warden's and Cardenas' duties are any different from those of the other district clerks. Accordingly, I find that the Employer has failed to sustain its contention. I find that both Warden and Cardenas in fact share a community of interest with the unit employees, and accordingly, they shall be included in the unit.

Next, the Employer argues that the various noted categories of employees must be included in order to constitute an appropriate unit. The C&O dispatchers at issue in this case work in one department (Construction and Operations) and they work at eight separate district offices. They dispatch work crews by means of the DPSS system and radio. They are cross-trained and can perform any of the three different C&O dispatcher positions. The dispatcher duties are relatively similar from district to district; a C&O dispatcher from one district could work at another district with little training. The C&O dispatchers also regularly interact with each other. While the C&O dispatchers do not share common supervision, this fact does not preclude them from forming an appropriate unit. Texas Empire Pipeline, supra.

In the instant case, the facts clearly show that most of the additional employees the Employer seeks to add to the proposed unit do not share a community of interest with the C&O dispatchers. The other dispatchers which the Employer seeks to include, work in a variety of departments and at a variety of facilities. The only other dispatchers who interact with the C&O dispatchers are the fleet dispatcher, the fleet operations assistant, and Dispatch Assistant Evans. The dispatchers the Employer seeks to add also do not appear to interact with each other. Evans is also the only other dispatcher to share a common work situs with the C&O dispatchers. While the C&O dispatchers are crosstrained and can replace each other, none of the other dispatchers, save perhaps Evans, can perform the duties of the C&O dispatchers. The C&O dispatchers primarily dispatch via DPSS and radio. While most of the other dispatchers use the radio, the only other dispatchers to use DPSS are Evans and Murphy. All of the dispatchers at all of the facilities do have common benefits and earn similar wages. However, as set out above, wages and benefits are merely one factor to take into consideration among many other factors.

The record reveals that Dispatch Asssistant Frances Evans works at the Beach Cities district office at which unit C&O dispatchers also perform work. The electricians dispatched by Evans also work out of district offices. Evans uses the same dispatching systems as the C&O Dispatchers. Gloria Zuniga testified that she interacts frequently with Evans; presumably, the other C&O dispatchers frequently interact with her as well.

Accordingly, based on the record as a whole, it is concluded that Dispatch Assistant Frances Evans shares a close community of interest with the unit employees such that she must be included in the appropriate bargaining unit. With regard to the other categories of employees which the Employer seeks to include in the unit, the Employer has failed to establish that they share such a close community of interest with the unit employees to mandate their inclusion. Accordingly, the Employer's contention is rejected. Based on the record as a whole, I conclude that the petitioned for unit, as modified above, is an appropriate unit for collective bargaining.

There are approximately 20 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have

quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the International Brotherhood of Electrical Workers, Local 495, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters at each of the Employer's facilities noted in the appropriate unit, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, on or

before December 10, 1997. No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

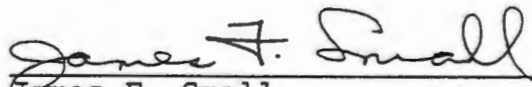
NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EST, on December 17, 1997.

DATED at Los Angeles, California, this 3rd day of December, 1997.



James F. Small
Acting Regional Director, Region 21
National Labor Relations Board

EXHIBIT 2

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

San Diego Gas & Electric,
and

International Brotherhood of
Electrical Workers, Local 465.

Case No. 21-RC-19862

The above entitled matter came on for hearing pursuant to notice, before **MARTHA Z. VILLANUEVA**, Hearing Officer, at 880 Front Street, #2224, San Diego, California on Thursday, November 13, 1997 at 9:00 a.m.

1 (Witness was excused.)

2 HEARING OFFICER VILLANVERA: Okay, you want to call your
3 next witness.

4 MR. CHIDLAW: The Employer calls Margaret Florence.

5 HEARING OFFICER VILLANVERA: Margaret Florence.

6 Whereupon,

7 **MARGARET FLORENCE**

8 was called as a witness herein and, after first having been duly
9 sworn, was examined and testified as follows:

10 HEARING OFFICER VILLANVERA: State your name out loud and
11 spell your last name.

12 THE WITNESS: My name is Margaret Florence, F-L-O-R-E-N-C-
13 E.

14 **DIRECT EXAMINATION**

15 Q BY MR. CHIDLAW: Good morning, Ms. Florence. What is your
16 current job title.

17 A Supervisor of Metro meter reading.

18 Q And where are you located?

19 A 6154 Mission Gorge Road, San Diego.

20 Q And what is your general -- what -- can you give me a 30-
21 second spiel on what you do?

22 A Personally?

23 Q Yeah, at work.

24 A At work? I -- 30 seconds. I supervise the meter readings
25 both call-in and full time and the office staff who do all of

1 the meter reading for the San Diego district as opposed to
2 northern.

3 Q And do you have a dispatch assistant who works for you?

4 A I do.

5 Q And do you know the pay grade of that person?

6 A She's a schedule 9 I believe; possibly a 10.

7 Q Is there more than one dispatch assistant that works for
8 you?

9 A For me? No, just the one.

10 Q Okay. Now, does that dispatch assistant use a radio?

11 A Yes.

12 Q Does that dispatch assistant use a telephone?

13 A Yes.

14 Q Okay. What else does -- well, what does that dispatch
15 assistant do?

16 A Primarily her responsibility is to make sure that all of
17 the hand-held processors used for reading meters are loaded
18 correctly so that the meter readers can take them out in the
19 field on a daily basis.

20 Q Okay, and other than that duty what else does the dispatch
21 assistant do?

22 A Oh, she has maintenance responsibilities for the
23 processors. She has maintenance responsibilities for the
24 computers that are used to generate the information. She does -
25 - answers the phone when customers call. She responds on the

1 MR. CHIDLAW: I'll have a witness later to testify to that.

2 HEARING OFFICER VILLANVERA: Okay. Okay, Mr. Moore.

3 CROSS EXAMINATION

4 Q BY MR. MOORE: Good morning, Margaret.

5 A Hi, David.

6 Q Mr. Chidlaw asked you a question of a meter reader in the
7 field and called in on the radio. How many meter readers have
8 radios?

9 A The trucks are equipped about -- about eight or ten of our
10 trucks are equipped with radios and we have 25 two-way radios
11 that do out in the field.

12 Q When you say two-way radios, the small hand-helds?

13 A Yes.

14 Q And that's for communicating between the meter reader and
15 the office?

16 A For the meter reader and the supervisor in the van, yes.

17 Q Does your dispatchers interact with the dispatchers in the
18 construction and operation such as Beach Cities or Metro,
19 Eastern?

20 A I suppose that they could but in a normal course of the
21 daily work I don't believe they do.

22 Q I believe you testified there's two dispatchers, one at
23 Metro and one at Northeast.

24 A At San Marcos.

25 Q San Marcos, okay. Are there three dispatchers in meter

1 that's correct. But a large part of what she does in the
2 morning is the reassignment of routes.

3 Q Okay. Is it not a fact that the meter reading is a
4 different department from the construction and operation?

5 A Yes.

6 MR. MOORE: I have no other further questions.

7 HEARING OFFICER VILLANVERA: Diana Rolston, you supervise,
8 correct?

9 THE WITNESS: Yes.

10 HEARING OFFICER VILLANVERA: Who supervises Tracy
11 Hollingsworth?

12 THE WITNESS: Steve Krebs, K-R-E-B-S.

13 HEARING OFFICER VILLANVERA: And do you ever super vise
14 Tracy at all?

15 THE WITNESS: No.

16 HEARING OFFICER VILLANVERA: Any other questions for this
17 witness?

18 MR. CHIDLAW: I have one more.

19 REDIRECT EXAMINATION

20 Q BY MR. CHIDLAW: Do you have any reason to believe -- well
21 strike that.

22 You testified before that Tracy Hollingsworth performs the
23 same duties as Diana Rolston; is that correct?

24 A That's correct.

25 Q Okay, do you have any reason to believe that's not correct?

1 A No.

2 MR. CHIDLAW: That's all I have. Thank you.

3 HEARING OFFICER VILLANVERA: Nothing further? Thank you.

4 (Pause.)

5 Next witness.

6 MR. CHIDLAW: The Employer calls Frank Johnson.

7 HEARING OFFICER VILLANVERA: Mr. Johnson.

8 (Witness was excused.)

9 Whereupon,

10 FRANK JOHNSON

11 was called as a witness herein and, after first having been duly
12 sworn, was examined and testified as follows:

13 HEARING OFFICER VILLANVERA: Please have a seat. State
14 your full name.

15 THE WITNESS: My name's Frank Johnson, last name J-O-H-N-
16 S-O-N.

17 DIRECT EXAMINATION

18 Q BY MR. CHIDLAW: Good morning, Mr. Johnson, what's left of
19 it.

20 What is your current job title?

21 A I supervise the assistant protection maintenance section.

22 Q And what organization is that part of?

23 A It's part of the electric construction and maintenance
24 group -- or department.

25 Q And do you have any dispatchers working for you?

1 A Yes, I have one crew dispatcher?

2 Q And what is his name?

3 A Jim Fruchae (ph).

4 Q And what does -- well, is Mr. Fruchae a non-exempt
5 employee?

6 A Yes, he is.

7 Q And is he hourly?

8 A Hourly.

9 Q And do you know what his pay grade is?

10 A I believe it's a pay grade 12.

11 Q Do you know what his job title is?

12 A It's crew dispatcher.

13 Q Okay. And what location does he work out of?

14 A He works out of the Kearny facility on Overland Drive.

15 HEARING OFFICER VILLANVERA: Do you happen to know the
16 address on Overland?

17 THE WITNESS: Yeah, it's 5488 Overland.

18 HEARING OFFICER VILLANVERA: Avenue?

19 THE WITNESS: Uh-huh.

20 Q BY MR. CHIDLAW: Is Mr. Fruchae eligible for CIP?

21 A Yes, he is.

22 Q Okay. And does he use the DPPS system?

23 A No, he does not.

24 Q What system does he use?

25 A He uses primarily a system that we've created at Kearny on

1 Q BY MR. MOORE: Does your crew dispatcher have conversations
2 on a regular basis, daily basis, with the crew dispatchers in
3 the C&O districts?

4 HEARING OFFICER VILLANVERA: Would you please tell us what
5 C&O is. I don't think we've

6 MR. MOORE: I'm sorry, construction and operation.

7 THE WITNESS: Not on a regular basis.

8 Q BY MR. MOORE: If they did communicate, what would it be
9 about?

10 A Basically the status of a project, a new construction
11 project.

12 Q Is Kearny department separate from the construction and
13 operation department?

14 A It's in a different division.

15 Q They're separated?

16 A That's correct.

17 Q The crews that are Kearny would not, at any time, be under
18 the control of a construction and operations dispatcher would
19 they?

20 A The crew itself would not. Although we have augmented
21 construction and operating districts with personnel. Currently
22 doing that now, I believe, on a part-time basis and then during
23 system emergencies, they all work together.

24 Q Would you explain "augment"?

25 A I believe we have -- my group does not, but I believe our

1 A Yes.

2 Q And what are those?

3 A We have one separate emergency vehicle. It's only used due
4 to the specialized equipment for larger, higher pressure, large
5 diameter gas emergencies. The normal district gas regulator
6 trucks are also used for emergency response and there's
7 approximately 10 of those. She will move those around in an
8 emergency.

9 Q And that's Gloria?

10 A Yes.

11 Q And where are Gloria and Laura officed?

12 A Within pipeline operations at the Miramar address,
13 Consolidated Way. I believe it's 6875 Consolidated Way.

14 MR. CHIDLAW: That's all I have for now.

15 HEARING OFFICER VILLANVERA: Mr. Moore.

16 MR. MOORE: Oh, a few questions.

17 **CROSS EXAMINATION**

18 Q BY MR. MOORE: Mr. Chidlaw asked you about a leak, if there
19 was -- if one of your personnel found a leak, they would contact
20 a dispatcher; is that correct?

21 A It depends on the type of leak and what pressure it is.

22 Q Broken and blowing; who would they contact?

23 A Again, it depends on what is necessary for the leak. If
24 it's above 60 pounds, we have the responsibility. If we need a
25 crew to dig up the line, we will contact them.

1 Q BY MR. MOORE: Does the dispatcher that you -- the two you
2 have, do they commingle or -- excuse me, the wrong word.

3 Do they interface with the dispatchers in the C&O?

4 A Not on a normal day-to-day basis, no.

5 Q The gas personnel in the construction and operation, do you
6 construction and maintenance work, correct?

7 A Yes.

8 Q All right. The personnel in your division, operations, you
9 maintain the system maintenance-wise, the reg stations versus
10 the construction, correct?

11 A True.

12 Q Okay. So, there is a separation between the two as far as
13 the work duties; is that correct?

14 MR. CHIDLAW: I'll object that it's vague.

15 THE WITNESS: It's ambiguous. There is a separation but
16 there's also a lot of the same-type work.

17 Q BY MR. MOORE: Okay, do you have --

18 MR. CHIDLAW: If Mr. Moore would let him finish the answer.

19 HEARING OFFICER VILLANVERA: Go ahead, Mr. Lifer.

20 THE WITNESS: When you talk about construction, I don't
21 think I could give that a yes or no answer. They have their
22 requirements and their responsibilities, but we also have ours
23 on many of the same projects where we -- to support each other.

24 Q BY MR. MOORE: Does your personnel construct pipeline?

25 A Excuse me.

- 1 A No.
- 2 Q Do you have a district clerk?
- 3 A Yes.
- 4 Q And does that district clerk perform any dispatching
5 functions?
- 6 A On a relief basis, during vacation, when the dispatcher is
7 sick.
- 8 Q What percentage of the dispatching functions does the
9 district clerk perform while she's filling in?
- 10 A About 10 percent.
- 11 Q So she doesn't do all the dispatching work?
- 12 A No, she relieves on the radio and she performs a portion of
13 the dispatcher's function.
- 14 Q And what portion does she do?
- 15 A The voice radio dispatching, the crews' schedule, the route
16 schedule for the crews, the service crew. She responds to any
17 of the calls, trouble calls, mainly maintaining the radio and
18 then gets miscellaneous phone calls. And if there's paperwork
19 to process, she processes paperwork accordingly.
- 20 Q Does the district clerk do her own job while she's filling
21 in for the dispatcher?
- 22 A Part and piece, not 100 percent.
- 23 Q And on an annual basis how much time does this district
24 clerk fill in for the dispatcher?
- 25 A As I mentioned about 10 percent.

1 Q Interacting with a customer, checking on whether the work
2 is done or not.

3 A In a trouble situation they do but as a rule they generally
4 don't interact with customers on a regular basis.

5 Q Have you had crews from other districts working in your
6 center?

7 A We have.

8 Q So you testified that your dispatcher does not interact
9 with the dispatcher say in Carlsbad or Escondido.

10 A They do interact, but what I mentioned is they probably do
11 that a little bit of the time but not a lot of the time.

12 Q Could a dispatcher from Orange County, for example, go to
13 Carlsbad and do the same job that's being done in Carlsbad as a
14 dispatcher?

15 A Probably not 100 percent because there's subtle differences
16 but for the most part, they could for that particular
17 discipline, the electric dispatch.

18 HEARING OFFICER VILLANUEVA: I'm sorry, this is only in an
19 emergency situation or is this normally?

20 MR. MOORE: There could be --

21 Q BY MR. MOORE: Jim?

22 A You mean for like a routine vacation relief or something
23 like that.

24 Q Correct.

25 A They could, they're similar.

1 Orange County and they're --

2 A Or they might be coordinating resources through fleet.

3 MR. MOORE: Is that a question or is that an answer.

4 HEARING OFFICER VILLANUEVA: Oh, he's answered it.

5 MR. MOORE: Well, Mr. Chidlaw posed a question -- the
6 answer and he confirms it.

7 HEARING OFFICER VILLANUEVA: Well, if you want to raise an
8 objection, raise an objection but at this time let's go on. Any
9 further questions for this witness?

10 MR. CHIDLAW: Yeah.

11 Q BY MR. CHIDLAW: Do your -- who does tree trimming for your
12 C & O people when they need tree trimming?

13 A Who does the tree trimming?

14 Q Yeah.

15 A Our construction services has a contractor, Davey (ph)
16 Tree.

17 Q And so how would that happen? Would you -- well, I don't
18 want to ask the question with the answer but does your
19 dispatcher have any contact with construction services?

20 A No.

21 MR. CHIDLAW: I have nothing further.

22 HEARING OFFICER VILLANUEVA: Nothing?

23 MR. MOORE: Nothing.

24 HEARING OFFICER VILLANUEVA: Okay, you may step down.

25 Thank you.

- 1 Q What's your title?
- 2 A Manager, construction services.
- 3 Q And where is that located?
- 4 A Century Park.
- 5 Q And do you have a dispatcher that works for you?
- 6 A Yes, I do.
- 7 Q And what's her name?
- 8 A Gwendolyn Murphy.
- 9 Q What's her pay grade, do you know?
- 10 A Eleven.
- 11 Q Is she eligible for the CIP program? Does she participate
- 12 in the CIP program?
- 13 A Yes.
- 14 Q Does she work during days, typically an eight-hour shift?
- 15 A Yes.
- 16 Q Does she give input to the DPSS system?
- 17 A Yes.
- 18 Q Does Ms. Murphy have interaction to your knowledge with the
- 19 dispatchers from the C & O Centers?
- 20 A Rarely, if at all on a regular business level. I would say
- 21 very rarely.
- 22 Q Okay, and how long have you been the manager of --
- 23 A Roughly November 2nd, 1996.
- 24 Q Does Ms. Murphy have interaction with any dispatcher in the
- 25 company?

- 1 A As part of her normal course of business, I would say no.
- 2 Q Does she ever have any interaction with trouble or service
- 3 crew dispatcher?
- 4 A She creates reset and relight orders. I'm not sure if that
- 5 constitutes communication with those dispatchers.
- 6 Q Do her duties include a major amount of time on the
- 7 telephone with customers and the phone center?
- 8 A Yes.
- 9 Q Any time with the district offices on the phone?
- 10 A Not very often.
- 11 Q Does she submit requests for city permits and easements?
- 12 A Yes.
- 13 Q Does she make follow-up phone calls to customers, phone
- 14 centers and the districts?
- 15 A She does do that.
- 16 Q Does she complete jobs on DPSS?
- 17 A Yes.
- 18 Q Does she issue night orders to district storerooms for
- 19 staging of material?
- 20 A Yes.
- 21 Q Does she issue gas and other orders to trouble for
- 22 servicemen?
- 23 A For resets and relights, yes.
- 24 Q Does she set up planned outages?
- 25 A Yes.

1 Q Do you supervise or share supervision over any groups that
2 include dispatchers?

3 A Yes.

4 Q And what are the dispatching positions below you?

5 A They would be the two dispatchers at the electric building
6 downtown at 101 Ash and the two dispatchers at the equipment
7 operations center at Miramar.

8 Q Okay, and do those dispatchers have an immediate
9 supervisor?

10 A Yes, they do.

11 Q And who is that?

12 A Al Rivera.

13 Q And is Mr. Rivera unavailable today?

14 A Yes, he's out of the country.

15 Q Now, in the fleet dispatching group that you talked about,
16 how many dispatchers are there?

17 A There are two positions there.

18 Q And those job titles are fleet dispatcher and operations
19 assistant?

20 A Correct.

21 Q And what do they do?

22 A They receive the orders that come in from the districts for
23 equipment and/or staff to operate the equipment, plan out the
24 day's work for the equipment operators and assign the work to
25 the individual operators based on seniority and qualifications.

1 Q And they work a typical day shift?

2 A Correct.

3 Q And they're subject to the normal San Diego Gas and
4 Electric human resources policies?

5 A That is correct.

6 Q Moving on to the vehicle dispatchers, how many of those are
7 there?

8 A Two.

9 Q And where are they located?

10 A They're located at the electric building at 101 Ash Street.

11 Q And what do those folks do?

12 A They oversee assignments of the pool vehicles that are
13 domiciled both at the electric building and at Century Park.
14 They process requests for transportation for vehicles from the
15 staff at both of those locations, if somebody needs a temporary
16 vehicle. They assign that vehicle. They also oversee the
17 vehicle assignments for the car pool program that the company
18 administers and the -- they assist with parking at the electric
19 building.

20 Q And are those employees clerical and technical hourly
21 employees?

22 A Yes.

23 Q Subject to San Diego Gas and Electric's typical HR
24 policies.

25 A That is correct.

1 A There is a helper assigned to the electric building whose
2 function there is to assist them in any type of duties that need
3 to be done such as that.

4 Q Okay, and they would dispatch him to do that errand?

5 A Correct.

6 Q And do you know the pay grade of the vehicle dispatchers?

7 A I believe it's a pay group 8.

8 MR. CHIDLAW: I have nothing further at this time, Mr.
9 Lyons.

10 HEARING OFFICER VILLANUEVA: Mr. Moore?

11 MR. MOORE: Good afternoon, Chris.

12 THE WITNESS: Good afternoon.

13 CROSS EXAMINATION

14 Q BY MR. MOORE: Let's go to the electric building. I use
15 the word dispatcher. Would it make more sense the assignment of
16 cars, they assign cars to individuals?

17 A They assign the vehicles as the vehicles are available.

18 Q Right. They don't dispatch personnel, do they?

19 A They dispatch the one helper who is there.

20 Q Do they dispatch crews?

21 A No, sir.

22 Q Do they dispatch servicemen?

23 A No, sir.

24 Q Do they interact with the construction and operation
25 personnel?

1 A Uh huh.

2 HEARING OFFICER VILLAMUEVA: Is that yes?

3 THE WITNESS: Yes, ma'am.

4 Q BY MR. CHIDLAW: And her time spent as gas dispatcher is
5 emergencies, lunches, things like that?

6 A Yes.

7 Q Okay.

8 (Pause.)

9 Q Yeah, when, when your crews in your district need tree
10 trimming, how do they get that?

11 A When the crews need it they will radio it into my
12 dispatcher from the crew and there's two different ways they can
13 get it, -- or if it's an emergency cut we'll call --

14 Normally we try going through sort, the dispatcher will go
15 through sort and put it into the system. But if it's an
16 emergency cut right now we'll just, you know, call on the
17 radio --

18 Q Who do you call?

19 A Asplen.

20 HEARING OFFICER VILLAMUEVA: Sir?

21 THE WITNESS: Asplen the tree trimming contractor, ma'am.

22 HEARING OFFICER VILLAMUEVA: Oh.

23 Q BY MR. CHIDLAW: So one follow up question. Even though
24 you're no longer fleet you still know what's basically on the
25 ground as this special equipment operators at northeast and

1 Q And you held that position?

2 A From, 1980 to 1989.

3 Q Are you presently employed at the northeast O&M?

4 A Yes, I am.

5 Q Prior to being a dispatcher there, were you a dispatcher
6 somewhere's else?

7 A In 1989 when we had the re-organization I was sent to
8 project construction which is now construction services as a
9 dispatcher.

10 Q Okay. Did you hold that position at Beach City?

11 A Yes.

12 Q Could you explain the duties and to the best of your
13 knowledge what they are?

14 A I dispatch overhead and underground crews, service crews -
15 - there's a eight crews, one -- one overhead service group.
16 Order material. Do all the "LAR's", "DPSS" --

17 HEARING OFFICER VILLAMUEVA: I'm sorry, did you say
18 "LAR's"?

19 THE WITNESS: Uh-huh, line equipment request. Order all
20 the material for the crews.

21 Q BY MR. MOORE: Okay. You've heard today testimony of a
22 number of jobs the company has introduced; district clerk, two
23 pipeline operation, one crew dispatcher currently, one fleet
24 dispatcher at "Marimar", one assistant at "Marimar"; two vehicle
25 dispatchers electric building, that leaves three -- service

1 dispatchers and one dispatcher out of Century Park.

2 Could you tell me that if, as a dispatcher you inter-react
3 with these people?

4 A The only people that I probably inter-react with is
5 Frances and I coordinate --

6 HEARING OFFICER VILLAMUEVA: Last name?

7 THE WITNESS: Frances Evans. She works at Beach city,
8 coordinating underground services, CT meters, we have to
9 coordinate to get her men out there to set the meters. I also
10 have inter-action with fleet.

11 Q BY MR. MOORE: Do you know Gwyn Murphy?

12 A Yes I do. I used to work with her when I was in the same
13 department as her.

14 Q Do you interaction with her in any manner?

15 A No I don't.

16 Q Do you know what her job?

17 A Well, she's titled as a dispatcher.

18 HEARING OFFICER VILLAMUEVA: She's a what?

19 THE WITNESS: She's titled as a dispatcher.

20 Q BY MR. MOORE: To your knowledge does she do the same
21 dispatching as you do?

22 A No. When I was in that department we had two dispatchers
23 and there again that was the re-organization, new names came in
24 and there is no dispatching in that department whatsoever.

25 HEARING OFFICER VILLAMUEVA: You were in that department

1 when?

2 THE WITNESS: From 19, November of '89 to May of '91.

3 Q BY MR. MOORE: Do you know Joanne Borden?

4 A Yes I do.

5 Q Do you know what her job is?

6 A I believe she's a district clerk in Orange County.

7 Q To your knowledge has she done any dispatching?

8 A Yes. I inter-acted with her when she relieves Cheryl the
9 dispatchers.

10 Q As a dispatcher at northeast, do you, you inter-react with
11 other dispatchers such as Beach City, North Coast, North East?

12 A All of them.

13 Q Okay. Would that be a norm?

14 A Yes it is. From time sheets we have crews that work
15 trouble one end of the county to the other end, we interact with
16 time sheets, who the crew was, who was on the crew, all kinds of
17 set up.

18 Q Okay.

19 (Pause.)

20 Q In your testimony you said you interact with fleet. Could
21 you explain what you do?

22 A When we need specialized equipment, we don't have it in
23 our district.

24 Q Correct.

25 A Wire stringing equipment and stuff like that.

1 Q Who would you call?

2 A Normally I call Bob White, that's who I normally call.

3 Q Do you know what his title is?

4 A I believe it's fleet dispatcher. Also they've changed the
5 rules on us now, when we have a flat tire, the crew's call in a
6 flat tire, we used to have to call the vendor now we go through
7 fleet again which is back to the old ways.

8 HEARING OFFICER VILLAMUEVA: This was changed when?

9 THE WITNESS: Oh, I guess about six or seven months ago.
10 We were having to call the vendors if one of the trucks, that
11 one of our guys was driving had a flat tire. Now we have to go
12 through fleet, they call the vendor.

13 Q BY MR. MOORE: And you've heard testimony that dispatching
14 of Metro meter reading, do you interact with them in any manner?

15 A No we don't.

16 Q If a new order was to come in for a new service order
17 whether electric, I'll deal with electric cause you're an
18 electric dispatcher, underground. How is that order received to
19 the district?

20 A It's received through, it's transmitted through CISCO and
21 we get, like I'll come in in the morning and I run this program
22 to retrieve all my meter sets and they can be originated from
23 planning department, I could originate them myself, I do it.
24 But normally what we do now is we just run a special little
25 program and get our meter sets in the morning.

1 MR. CHIDLAW: Okay.

2 CROSS EXAMINATION

3 Q BY MR. CHIDLAW: What else do you do during the day when
4 you're not on the radio?

5 A What else do I do? I get the work order ready for the
6 next day. I complete all their work. I enter some time, I do
7 time keeping. I do a new program, it's called DIMS, entering
8 maintenance and completing maintenance programs on that. But,
9 I'm busy all day long, it's more than an eight hour job, I can
10 tell you that.

11 Q Yeah. Any other duties you perform on a daily basis other
12 than on the radio?

13 A Any other duties?

14 Q Yeah, any other, are there any other duties other than
15 those you've enumerated?

16 A Whatever else they give me.

17 Q Can you, can you testify as to what any of those are?

18 A I can sit down and probably tell you what I do from the
19 minute I walk in to the minute I walk out, if that's what you
20 want me to do.

21 Q Well, we probably don't want to hear that, but I'm more
22 interested in general, general categories of duties. Are there
23 any others that you haven't talked about?

24 A Besides DPSS and SORT and CISCO and pulling job numbers,
25 processing damage claims, the DIMS program, helping the time

PROOF OF SERVICE

I, the undersigned, declare that I am over the age of 18 years and not a party to the case within. My business address is 229 W. Washington Street, San Diego, California, 92103, San Diego County.

On December 23, 1997, I caused to be served the following documents pertaining to the matter of SAN DIEGO GAS AND ELECTRIC AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 465:

Union/Petitioner Response to Employer's Request for Review of Regional Director

by placing a true copy(ies) of each document into a separate sealed envelope, the original and seven duplicates sent to the first address, and one copy sent to the second address, and one copy to the third address, all via Express Mail next day delivery of the United States Postal Service.

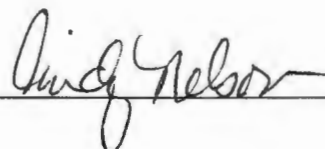
Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

James Small
Acting Regional Director
National Labor Relations Board--Region 21
888 South Figueroa Street, 9th Floor
Los Angeles, CA 90017-5449

Dana Cephas, Attorney at Law
Sheppard, Mullin, Richter & Hampton
501 West Broadway, 19th Floor
San Diego, CA 92101-3598

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: December 23, 1997

By: 

508
1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
JOHN D. COLLINS, CAL. BAR NO. 45055
3 DAVID B. CHIDLAW, CAL. BAR NO. 144681
501 West Broadway, 19th Floor
4 San Diego, California 92101-3598
Telephone: (619) 338-6500

5 Attorneys for Employer
6 SAN DIEGO GAS AND ELECTRIC

7
8 BEFORE THE
9 NATIONAL LABOR RELATIONS BOARD

10
11 In the Matter of:

12 SAN DIEGO GAS AND ELECTRIC,

13 Employer,

14 and

15 INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 495,

16 Petitioner.

) Case No. 21-RC-19862

) **EMPLOYER'S REQUEST FOR
REVIEW OF REGIONAL
DIRECTOR'S DECISION TO
CONDUCT ELECTION BY MAIL
BALLOT**

) Petition Date: October 30, 1997
Hearing Date: November 13, 1997
Decision Date: December 3, 1997
) Supplemental Decision Date:
December 18, 1997

18
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20 I.

21 INTRODUCTION

22
23 San Diego Gas & Electric ("SDG&E") respectfully requests review of the
24 Regional Director's decision dated December 18, 1997, to conduct the election of this matter
25 by mail ballot. Election by mail ballot is not appropriate here because the petitioner has not
26 demonstrated that a manual election would be infeasible. This Request for Review is
27 warranted under Section 102.67(c)(1) and (2) of the Board's Rules and Regulations. Based
28

1 on Board precedent, the facts presented and existing case law, the Regional Director's
2 decision to conduct a mail ballot election should be reversed.

3
4 II.

5 FACTUAL BACKGROUND
6

7 On December 9, 1997, SDG&E was informed that the Regional Director was
8 considering the use of a mail ballot for the election in the pending matter. (See December 9,
9 1997 letter from NLRB field attorney attached as Exhibit "A.") SDG&E informed the
10 Board's agent that it believed a mail ballot was not appropriate and that the employer would
11 not stipulate to a mail ballot election. (See December 12, 1997 letter from David B. Chidlaw
12 attached as Exhibit "B.") Instead, SDG&E proposed that the election be held at two sites,
13 and the company offered to provide transportation as needed or requested. (Id.) The
14 petitioner, by letter dated December 11, 1997, notified the Board's agent that it preferred a
15 mail ballot, however, petitioner suggested two proposed manual election formats whereby
16 voting booths would be set up at each of the eight locations where employees expected to
17 vote are assigned. (See petitioner's letter attached as Exhibit "C.") The petitioner proposed
18 that the Board's agent drive from site to site during a single day in order to conduct the
19 election at each site. (Id.)
20

21 Based in part on the petitioner's proposal to conduct a manual election at all
22 eight sites at issue, the Regional Director determined that "8 hours of board agent time would
23 be involved to conduct a manual election among the unit employees at all 8 sites." (Regional
24 Director's letter dated December 18, 1997 at page 2 attached as Exhibit "D.") The Regional
25 Director implied that the travel by the Board agent would impose a burden while suggesting
26 that a "mail (postal) ballot could be accomplished with a minimal expenditure of Agency
27 resources" (Id.) The eight locations at issue are identified in the Regional Director's
28 Decision and Direction of Election. (See Decision and Direction of Election at page 3,

1 footnote 2, attached as Exhibit "E.") The parties stipulated and the Regional Director
2 recognized that the employees in question all "work a set schedule" at essentially the same
3 time each day. (Decision and Direction of Election at page 4, footnote 5.)
4

5 SDG&E proposed that the election be held at the company's Northeast and
6 Century Park offices. There are twenty employees on the Excelsior list for the pending
7 election. Their locations respective to the two polling sites are as follows:
8

9 Century Park: Three employees from the Beach Cities office (six mile
10 travel distance); four employees from the Metro office (ten miles); three
11 employees from the Eastern office (fourteen miles); and one employee
12 from the Mountain Empire office (sixty miles);
13

14 Northeast: Three employees assigned at the Northeast office (zero
15 miles); three employees at the North Coast office (seventeen miles); one
16 employee at the Ramona office (twenty miles); and two employees from
17 the Orange County office (forty-nine miles).
18

19 (See Declaration of Dana Cephas attached as Exhibit "F.") Thus, seventeen of the twenty
20 employees expected to vote in the upcoming election would have to travel twenty miles or
21 less to cast their ballots. Nothing in the petitioner's letter of December 11, 1997 or the
22 Regional Director's decision of December 18, 1997 suggests that it would be infeasible to
23 conduct a manual election at the two sites proposed by SDG&E.
24
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1 III.

2 A MANUAL BALLOT IS APPROPRIATE HERE
3 BECAUSE THERE IS NO EVIDENCE OF INFEASIBILITY
4

5 Under "existing Board precedent and policy, the applicable presumption favors
6 a manual election, not a mail-ballot election." Willamette Industries, Inc., 322 NLRB
7 No. 151 (1997) (Board reversed Regional Director's direction of a mail-ballot election
8 because eighty mile distance between Board's office and employer's facility was insufficient
9 to justify a departure from the normal manual election procedures). Moreover, the Board's
10 Case Handling Manual provides that "the use of mail balloting, at least in situations where
11 any party is not agreeable to the use of mail ballots, should be limited to those circumstances
12 that clearly indicate the infeasibility of a manual election." (NLRB Case Handling Manual
13 ¶ 13,360)(emphasis added). Part of the justification noted in the Case Handling Manual is
14 the fact that mail ballots are more likely to result in objections that cannot be as readily
15 resolved as when the voting procedures are carried out in the presence of a Board agent.
16 (Id.) In Shepard Convention Services v. NLRB, 152 LRRM 2471, 2474 (D.D.C. 1996), the
17 court held that it was improper for the Board to order a mail ballot election over a party's
18 objection where the union had never demonstrated that manual voting was infeasible. In
19 Shepard, the proposed manual election was to be conducted at two locations at opposite ends
20 of the City of Atlanta and some of the voters would have been required to travel twenty or
21 thirty minutes to reach a voting poll. (Id.)
22

23 Here, just as in Shepard, the employer has proposed a manual election at two
24 sites and the vast majority of the expected voters are located within twenty miles of their
25 respective polling place. Not only did SDG&E announce its opposition to a mail ballot, but
26 the petitioner here did not even express any opposition to a manual election—the petitioner
27 simply stated that it preferred an election by mail but offered two suggestions for manual
28 ballots. In addition, based on the Board's ruling in Willamette Industries, the fact that the

1 Board's agent might require three or four hours of time to conduct the proposed election is
2 insufficient justification to support a mail ballot election.

3
4 The two cases relied upon by the Regional Director in his December 18, 1997
5 letter are inapposite and do not support a mail ballot election in this instance. Specifically, in
6 London's Farm Dairy, Inc., 323 NLRB No. 186 (1997), the employees expected to vote
7 worked different schedules with various reporting times throughout the day that would have
8 required extended polling hours covering substantially all of two days in order to permit each
9 employee to vote. Similarly, in Reynolds Wheels, Int'l., 323 NLRB No. 187 (1997), the
10 employees had such staggered working shifts that it would have required three consecutive
11 days of manual voting to accommodate all eligible voters. In contrast, under SDG&E's
12 manual voting proposal, the election could be conducted on the same day for an hour or two
13 at each location. This does not come close to matching the difficulties addressed in London's
14 Farm or Reynold's Wheels.

15
16 IV.

17 CONCLUSION

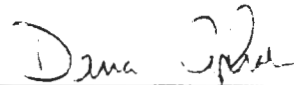
18
19 The Board's policies strongly oppose an election by mail ballot in instances
20 such as this when one of the parties objects to a mail ballot and there is no evidence that a
21 manual election would be infeasible. In addition to the absence of any evidence that a
22 manual election would be infeasible, the parties here both provided possible options for
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1 conducting a manual election. Accordingly, a manual election can be conducted with
2 minimal difficulties and a mail ballot is not appropriate. For these reasons, SDG&E
3 respectfully requests that the Board grant its Request for Review and reverse the Regional
4 Director's decision to conduct an election by mail ballot.

5
6 Dated: December 23, 1997

7
8 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

9
10 By



11 JOHN D. COLLINS
12 DAVID B. CHIDLAW
13 DANA CEPHAS

14 Attorneys for Employer
15 SAN DIEGO GAS AND ELECTRIC
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United States Government

NATIONAL LABOR RELATIONS BOARD

Region 21

888 South Figueroa Street, Ninth Floor

Los Angeles, CA 90017-5449

Facsimile: (213) 894-2778

Telephone: (213) 894-7859

Resident Office:

555 W Beech St. - Suite 302

San Diego, CA 92101-2939

VIA FACSIMILE ONLY

December 9, 1997

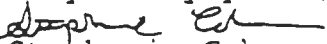
David B. Chidlaw
Sheppard, Mullin, Richter & Hampton
501 West Broadway, 19th Floor
San Diego, CA 92123

Re: San Diego Gas & Electric
Case 21-RC-19862

Dear Mr. Chidlaw:

The region is considering the use of a mail ballot in this election. The Region recognizes that there are several locations involved over a 70 mile radius with approximately 19 eligible voters. Please respond in writing by December 12, 1997 regarding your position about a mail verses a manual ballot procedure. In addition, please provide an appropriate logistical sequence (times and locations) for a manual election. Thank you for your cooperation.

Very truly yours,


Stephanie Cahn
Field Attorney

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
2 A Limited Liability Partnership
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4 DAVID B. CHIDLAW, CAL. BAR NO. 144681
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9 Attorneys for Employer
10 SAN DIEGO GAS AND ELECTRIC
11 COMPANY

12 BEFORE THE
13 NATIONAL LABOR RELATIONS BOARD
14

15 In the Matter of:

Case No. 21-RC-19862

16 SAN DIEGO GAS AND ELECTRIC,

17 Employer,

18 and

19 INTERNATIONAL BROTHERHOOD OF
20 ELECTRICAL WORKERS, LOCAL 495,

21 Petitioner.

**DECLARATION OF DANA CPEHAS
IN SUPPORT OF EMPLOYER'S
REQUEST FOR REVIEW OF
REGIONAL DIRECTOR'S DECISION
TO CONDUCT ELECTION BY MAIL
BALLOT**

22 I, Dana Cephas, declare as follows:

23 1. I am an associate with Sheppard, Mullin, Richter & Hampton LLP,
24 counsel for San Diego Gas & Electric Company. I have personal knowledge of the facts set
25 forth below, and if called to testify regarding them I could and would do so competently.
26
27
28

1 2. Based on a review of area maps and discussions with SDG&E
2 personnel, I have determined that the distances from the two proposed election sites are as
3 follows:

4
5 (1) Century Park: The Beach Cities office is six miles distant; the
6 Metro office is ten miles; the Eastern office is fourteen miles;
7 and the Mountain Empire office is sixty miles.

8
9 (2) Northeast: The North Coast office is seventeen miles distant; the
10 Ramona office is twenty miles; and the Orange County office is
11 forty-nine miles.

12
13 I declare under penalty of perjury under the laws of the State of California that
14 the foregoing is true and correct.

15
16 Executed on December 23, 1997, at San Diego, California.

17
18 
19 _____
20 DANA CEPHAS

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD
2 RE: SAN DIEGO GAS & ELECTRIC AND INTERNATIONAL BROTHERHOOD OF
3 ELECTRICAL WORKERS, LOCAL 495, CASE NO. 21-RC-19862

4 PROOF OF SERVICE BY OVERNIGHT MAIL

5 I, the undersigned, declare that I am, and was at the time of service of the papers
6 herein referred to, over the age of 18 years and not a party to the within action or proceeding. My
7 business address is Sheppard, Mullin, Richter & Hampton LLP, 501 West Broadway, 19th Floor,
8 San Diego, California 92101-3505, which is located in the county in which the within-mentioned
9 mailing occurred. I am readily familiar with the practice at my place of business for collection and
10 processing of correspondence for mailing with FedEx. Such correspondence is deposited with
11 FedEx on the same day in the ordinary course of business.

12 On December 23, 1997, I served the following document:

13 **EMPLOYER'S REQUEST FOR REVIEW OF REGIONAL
14 DIRECTOR'S DECISION TO CONDUCT ELECTION BY MAIL
15 BALLOT**

16 by placing a copy in a separate envelope for each addressee named below, with the name and
17 address of the persons served shown on the envelope as follows:

18 VICTORIA AGUAYO
19 REGIONAL DIRECTOR
20 JAMES SMALL
21 ACTING REGIONAL DIRECTOR
22 NATIONAL LABOR RELATIONS BOARD
23 REGION 21
24 888 SOUTH FIGUEROA STREET,
25 8TH FLOOR
26 LOS ANGELES, CA 90017-5449

DAVID MOORE
JERRY FECHER
BUSINESS REPRESENTATIVE
IBEW LOCAL 465
229 W. WASHINGTON STREET
SAN DIEGO, CA 92103-1997

27 JOHN J. TONER (Original)
28 EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
1099-14TH STREET, NW
WASHINGTON, D.C. 20570-0001

and by sealing the envelope and placing it in the appropriate location at my place of business for
collection and mailing with postage fully prepaid in accordance with ordinary business practices.

Executed on December 23, 1997, at San Diego, California.

☐

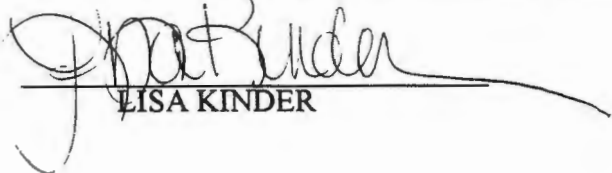
(State)

I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct.

☒

(Federal)

I declare under penalty of perjury under the laws of the United States of
America that the foregoing is true and correct and that I am employed in the
office of a member of the bar of this Court at whose direction the service
was made.


LISA KINDER

[sangas.doc pic]

GFLHB
San Diego, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SAN DIEGO GAS AND ELECTRIC,
Employer

and

Case 21-RC-19862

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 1445, AFL-CIO
Petitioner

ORDER

On December 17, 1997, the Acting Regional Director for Region 21 issued a Decision and Direction of Election, in which he directed that an election be conducted among the employees in the unit found appropriate.¹ No party filed a Request for Review from the Regional Director's Decision and Direction of Election. On December 9, 1997, the Region notified the parties that it was considering conducting the election by mail ballot, and invited the parties to submit position statements concerning the appropriateness of a mail ballot election. The Employer submitted a position statement opposing a mail ballot, requesting that the election be held at two of the Employer's sites, and offering to provide

¹ The unit found appropriate by the Regional Director is as follows:
All dispatchers, dispatch assistants, and district clerks employed by the Employer in its construction and operation districts, at the following facilities: Mountain Empire District, Pine Valley, California; Eastern District, El Cajon, California; Metro District, 701 33rd Street, San Diego, California; Beach Cities District, 4848 Santa Fe Street, San Diego, California; North Coast District, Carlsbad, California; Northeast District, Escondido, California; Orange County District, San Clemente, California; and the Ramona Satellite Office, Ramona, California; excluding all other employees, clerical employees, professional employees, guards, and supervisors as defined in the Act.

transportation as needed or requested. The Petitioner filed a position statement stating its preference for a mail ballot rather than a manual ballot. On December 18, 1997, the Acting Regional Director informed the parties that the election would be conducted by mail ballot, because the 20 unit employees work at 8 different locations spread across an area of over 80 miles.

On December 24, 1997, the Employer, pursuant to § 102.67(c)(1) and (2) of the Board's Rules and Regulations, filed a Request for Review of Regional Director's Decision to Conduct Election by Mail Ballot. The ballots for the election were mailed on January 5, 1998, and the election has been conducted and the ballots have been impounded pending the Board's ruling on the Employer's request for review.

The Employer contends that the Acting Regional Director's decision to hold a mail ballot election is contrary to the Board's rules, citing to the NLRB Casehandling Manual (Part Two), Representation Procedures (hereinafter referred to as "Casehandling Manual"), § 11336, which states that "the use of mail balloting, at least in situations where any party is not agreeable to the use of mail ballots, should be limited to those circumstances that clearly indicate the infeasibility of a manual election." The Employer contends that infeasibility of a manual election has not been shown, based on factors set forth in § 11336 of the Casehandling Manual, because the parties have stipulated that "the employees in question all 'work a set schedule' at essentially the same time each day."

Having duly considered the matter, the Board has decided to grant the Employer's Request for Review, and, on the merits, to affirm the Acting Regional Director's decision to hold the election in this case by mail ballot.

I. FACTUAL BACKGROUND

The Employer is a utility providing gas and electrical services in San Diego and Orange Counties, California.² The unit consists of approximately 20 dispatchers who work at eight locations in southwest California.³ After resolving unit issues in a Decision and Direction of Election, the Acting Director notified the parties by letter that he was considering conducting the election by mail ballot and solicited the views of the parties in this regard. Additionally, he asked the parties to suggest polling times and locations that would be utilized in a manual election. Petitioner agreed that a mail ballot election was preferable because the unit employees were scattered over eight locations 80 miles apart. With respect to a manual election alternative, Petitioner submitted a voting schedule for a traveling election. The Employer, contending that there was no showing that a manual election was "infeasible," opposed a mail ballot election. Instead, the Employer suggested that a manual election be conducted at two locations: Escondido (Northeast) and San Diego (Century Park). Further, the Employer made an unspecified transportation offer to any employee who needed or requested transportation to the two proposed voting sites. Under the Employer's proposal, 11

² The facts in this decision are taken either from the allegations in the Employer's Request for Review, which we accept as true for the purposes of this ruling, or from the findings of the Acting Regional Director in his December 3, 1997 Decision and Direction of Election, from which no party has filed a Request for Review.

³ Two of the sites are located in San Diego and the others are located in El Cajon, Pine Valley, Ramona, Escondido, Carlsbad and San Clemente.

employees would vote at the San Diego location and 9 at the Escondido location. No unit employees work at the Century Park San Diego location.⁴ The Employer proposed that the 7 employees who work at two other San Diego sites travel between 6 and 10 miles to reach the polls at Century Park. Three of the other 4 employees scheduled to vote at Century Park would travel 14 miles and one would travel 60 miles to reach the polls. Three of the 9 voters proposed to vote at Escondido work at that location. Four others would travel between 17 and 20 miles to reach the Escondido polls. The remaining 2 employees would travel 49 miles to reach Escondido. The Employer did not indicate whether the polling periods for the two proposed sites would be simultaneous or sequential. Nor did it comment on the Petitioner's suggestion that a traveling election would be the best alternative if a manual election was ordered.

The Acting Regional Director rejected the Employer's two-site manual election proposal as well as an 8-site traveling election, which no party preferred, and decided to conduct the election by mail ballot. The Acting Director noted that although the two-site manual election required 17 of the 20 employees to travel up to 20 miles (40 miles round trip) to reach one of the two sites, three of the 20 would have to travel more and one of the 20 would have to travel 60 miles (120 miles round trip). Further, no employees worked at one proposed polling place which is the headquarters for some managerial offices. The Acting Director also noted that the Employer was not specific with respect to the time period(s) for voting and whether one or two agents would be needed to supervise the election.

⁴ Petitioner noted, without reply by the Employer, that the Century Park facility is the headquarters for the Employer's labor relations and human resources offices.

He declined to order a traveling election because it would require a Board agent an estimated 8 hours to travel the 80 miles between the 8 locations, supervise the voting, count the ballots and return. A mail ballot election, however, could be accomplished with only minimal expenditure of Agency resources. It also eliminated the need for any voter to travel which would obviate the Employer's problematic transportation offer. Additionally, the Director concluded that this case involved eligible employees "scattered" over "long distances," criteria which are noted in the Casehandling manual as especially militating in favor of a mail ballot election.

II. DISCUSSION

We start from the premise that, absent agreement of the parties, the Regional Director has discretion in determining the arrangements for an election, including the location of the election and whether it should be conducted by manual balloting or mail ballot.⁵ Halliburton Services, 265 NLRB 1154 (1982); National Van Lines, 120 NLRB 1343, 1346 (1958). As the Board stated in National Van Lines:

[C]ircumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions. Because of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections shall be conducted. Only where it is affirmatively shown that a Regional Director has clearly abused the discretion afforded him to conduct representative [sic] elections will the Board nullify an election and prescribe other election standards.

⁵ A Regional Director's decision as to whether to hold an election by mail or manual ballot is, and always has been, judged under an "abuse of discretion" standard. Whichever party challenges the Regional Director's decision on the manner of conducting the election must show that the Regional Director has abused his or her discretion, which should be exercised within the guidelines we outline below.

A Regional Director's discretion, however, is not unfettered and is to be exercised within certain guidelines. Because of the value of having a Board agent present at the election, we adhere to the Board's long-standing view that representation elections should as a general rule be conducted manually, either at the workplace or at some other appropriate location. The Board has also recognized, however, that there are instances where the Regional Director, because of circumstances that would tend to make it difficult for eligible employees to vote in a manual election, may reasonably conclude that conducting the election by mail ballot, or a combination of mail and manual ballots, would enhance the opportunities for all to vote.⁶ The guidelines we set forth below are intended to clarify the circumstances under which such arrangements are appropriate.

When deciding whether to conduct a mail ballot election or a mixed manual-mail ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots:

(1) where eligible voters are "scattered" because of their job duties over a wide geographic area; (2) where eligible voters are "scattered" in the sense that their work schedules vary significantly, such that they are not present at a common

⁶ See Kwik Kare, Ltd. v. NLRB, 82 F.3d 1122 (D.C. Cir. 1996). The Board's long experience with representation elections has shown that the voter participation rate is generally higher in elections conducted manually than in mail ballot elections. However, because mail ballot elections have, by design, largely been limited to situations where factors were present which were likely to inhibit voter participation if the election were conducted manually, there is no reason to believe that participation in those particular elections would necessarily have been higher had they been manual elections. See *Id.* at 1126 (expressing doubt whether qualified voters who did not exert the minimal effort required to fill in and return a mail ballot would have been more likely to vote in a manual election where to do so would have required them to make a special trip to the election site during off duty hours).

location at common times;⁷ and (3) where there is a strike, a lockout or picketing in progress. If any of the foregoing situations exist, the Regional Director, in the exercise of discretion, should also consider the desires of all the parties, the likely ability of voters to read and understand mail ballots, and finally, what constitutes the efficient use of Board resources, because efficient and economic use of Board agents is reasonably a concern.⁸ We also recognize that there may be other relevant factors that the Regional Director may consider in making this decision, but we emphasize that, in the absence of extraordinary circumstances, we will normally expect the Regional Director to exercise his or her discretion within the guidelines set forth above.⁹

⁷ Thus, employees may be deemed to be "scattered" where they work in different geographic areas, work in the same areas but travel on the road, work different shifts, or work combinations of full-time and part-time schedules. The "scattered" criteria are intended to apply in any situation where all employees cannot be present at the same place at the same time. See, e.g., *London's Farm Dairy, Inc.*, 323 NLRB No. 186 (June 20, 1997); and *Reynolds Wheels International*, 323 NLRB No. 187 (June 20, 1997).

The mere fact that employees may work multiple shifts, thereby necessitating more than one voting session during the course of the workday, is not in and of itself a sufficient basis for directing a mail ballot election. However, as noted below, the Regional Director may appropriately take into account considerations of economy and efficient use of agency resources where other factors are present that suggest the propriety of using mail ballots. Thus, for example, where the holding of a manual election at times and places convenient for eligible voters would require that voting sessions be conducted at multiple locations and/or over a period of several days, the Regional Director, in exercising his discretion as to whether to use mail ballots, may consider such factors as the burden imposed on Board resources when there is a substantial distance between the workplace and the Regional, Subregional, or Resident Office responsible for conducting the election.

⁸ This factor is only to be considered if one or more of the other factors we have outlined above are present. Accordingly, Regional Directors should not order mail ballot elections based solely on budgetary concerns. See *Willamette Industries, Inc.*, 322 NLRB 856 (1997).

⁹ The current Casehandling Manual is based on Board law, which is evolving in this particular area. The manual should reflect current Board law and, therefore, it should be modified to reflect these revised guidelines, which set a more flexible standard than the "infeasibility" standard, as it sometimes is interpreted by parties to an election. We note that while some

In the strike, lockout, or picketing situation, for example, the Regional Director may, in his or her discretion, order either a mail ballot or a mixed manual-mail ballot election in order to insure that eligible voters are not required to cross a picket line in order to vote, or because striking and locked out workers may have other temporary employment that makes it difficult for them to get to the election site to cast a manual ballot. Similarly, where a significant number of eligible voters are not scheduled to be at the election site at the times proposed for manual balloting -- for such reasons as that they work part-time or on an on-call basis, or have duties that keep them in the field for substantial periods of time -- the

manual elections would not be "infeasible" in the sense of being "incapable" of being done, they certainly would be insofar as they would be "impracticable" or "not easily done." We are aware of no case where the Board has construed the "infeasible" standard set forth in the Casehandling Manual so narrowly as to mean a mail ballot election will be held only if a manual election is incapable of being accomplished.

Contrary to our dissenting colleagues, we do not agree that the holding of mail ballot elections in circumstances that fall within these guidelines will inevitably result in more instances of voter coercion, because a Board agent is not present while the vote is being cast. In fact, mail ballots have been utilized by the Board since the NLRA was enacted -- and in recent years in about 2% of all elections -- and abuses have rarely occurred. Indeed, in the 62-year history of the Act, there has been only one reported case of abuse, see Human Development Association, 314 NLRB 821 (1994), and there is a similar record in the 71-year history of the Railway Labor Act, under which the use of mail ballots in representation elections has been the rule rather than the exception. See, Eischen, Representation Disputes and Their Resolution in the Railroad and Airline Industries, The Railway Labor Act at Fifty, p. 47 (1977).

We also disagree with the dissent's contention that the use of the mail ballot "effectively silences" the employer during an essential part of the election campaign, because employers are prohibited, under the rule in Peerless Plywood Co., 107 NLRB 427 (1953), from giving "captive audience" speeches to employees during a period beginning 24 hours before the ballots are mailed. We note first that in mail ballot elections, as in manual ballot elections, the employer is free to conduct "captive audience" speeches throughout the campaign period leading up to the time when the Peerless Plywood rule takes effect. Moreover, even when the actual balloting period is underway, the employer and its agents remain free to continue to campaign against the union and to communicate the employer's views to employees through mailings, distributions and postings of campaign literature and through one-on-one conversations in the workplace, as long as such communications do not involve threats, coercion, or promises of benefit, and do not otherwise impair employee free choice.

Regional Director might reasonably conclude that their opportunity to participate in the election would be maximized by utilizing mail or mixed manual-mail ballots.

Where a Regional Director concludes that a given fact situation falls within or without these mail ballot criteria, that conclusion is entitled to appropriate deference by the Board. In the present case, although the Acting Regional Director did not use the precise terminology set forth above, the facts found by him make this case fit, in our view, comfortably within the first criterion. The Acting Regional Director relied on the fact that the unit employees are scattered over a large geographic area. He noted that a mail ballot would avoid employees having to travel long distances from their work stations in order to vote and that a manual election at each employee's work site would require a substantial expenditure of Agency resources. Under these circumstances, the Acting Regional Director clearly did not abuse his discretion by concluding that a mail ballot election would potentially afford the maximum number of eligible employees an opportunity to vote.

For all the foregoing reasons, we conclude that the Acting Regional Director in this case did not abuse the discretion which he has been afforded to determine the method of conducting the election, and thus we affirm the Acting Regional Director's decision to hold the election by mail ballot.

ORDER

IT IS ORDERED that the case is remanded to the Acting Regional Director for Region 21, with directions to open and count the ballots in the mail ballot election, and to take further appropriate action.

Dated, Washington, D.C.

William B. Gould IV, Chairman

Sarah M. Fox, Member

Wilma B. Liebman, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

4088
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7

8 BEFORE THE
9 NATIONAL LABOR RELATIONS BOARD
10

11 In the Matter of:) Case No. 21-RC-19862
12 SAN DIEGO GAS AND ELECTRIC,) EMPLOYER'S REQUEST FOR
13 Employer,) REVIEW OF DECISION OF
14 and) REGIONAL DIRECTOR
15 INTERNATIONAL BROTHERHOOD OF)
16 ELECTRICAL WORKERS, LOCAL 495,)
17 Petitioner.)
	Petition Date: October 30, 1997
	Hearing Date: November 13, 1997
	Decision Date: December 3, 1997

18
19 I.
20 INTRODUCTION AND SUMMARY OF ARGUMENT
21

22 Pursuant to the provisions of Section 102.67 of the Board's Rules and
23 Regulations, San Diego Gas & Electric ("SDG&E") respectfully requests review of the
24 Decision and Direction of Election ("Decision") of the Regional Director, Region 21, in this
25 matter dated December 3, 1997.^{1/} SDG&E believes its request for review is warranted under
26 Section 102.67(c)(1) and (2) because the appropriate unit should include ten additional
27

28 ^{1/} SDG&E does not request review of the Regional Director's decision to include
Dispatch Assistant Frances Evans in the unit.

1 employees who have a substantial community of interest with the company's other
2 dispatchers. Specifically, the ten additional employees all perform dispatch duties for most
3 or a large portion of their jobs and they have the same pay, work schedules and benefits as
4 the dispatchers in the proposed unit.

5 6 II.

7 FACTUAL BACKGROUND

8
9 The Petitioner seeks a unit consisting of all dispatchers, dispatch assistants, and
10 district clerks who work in SDG&E's Construction and Operations ("C&O") districts. (See
11 Decision at p. 3, attached as Exhibit "A.") The C&O dispatchers receive work orders and
12 dispatch work crews to perform the requested work. (Decision at p. 4; transcript of
13 November 13, 1997 hearing at 21:8-16, attached as Exhibit "B.") Although the C&O
14 dispatchers normally receive and dispatch work orders on the company's DPSS system, the
15 dispatchers also receive and dispatch between 25 and 35 percent of their work on the radio or
16 telephone. (Hearing transcript at 28:25-29:8; 163:6-10.)

17
18 The unit sought by the Petitioner is not appropriate because it should include
19 two gas utility clerks, one crew dispatcher, one fleet dispatcher, one operations assistant, two
20 vehicle dispatchers, two meter dispatch assistants, and a construction services dispatcher.
21 The parties stipulated that all of the dispatchers and dispatch assistants at the seven separate
22 C&O districts and one C&O satellite office should be included in any unit found to be
23 appropriate. (Decision at p. 3.) The stipulation covers eleven dispatchers, two dispatch
24 assistants, and four district clerks. (Decision at p. 3.)

25
26 Although the parties disagree as to whether other employees with dispatch
27 duties should be part of the proposed C&O dispatch unit, the Petitioner and SDG&E both
28 "agree that all of the employees in question are in pay grades 8-12, work a set schedule, have

1 essentially the same benefits, and are subject to all of the Employer's normal personnel
2 policies." (Decision at p. 4.) Additionally, the following facts establish the existence of a
3 significant "dispatching" community of interest between the ten dispatch employees
4 proposed by SDG&E and the C&O dispatchers that were stipulated to:

5
6 (a) The two dispatch assistants use a radio, telephone and SDG&E's
7 data systems to assign work to meter readers and reassign work to permanent and on-
8 call employees. (Hearing transcript at 32:18-35:24.)

9
10 (b) The crew dispatcher spends 60 to 70 percent of his time
11 dispatching seven 2-man crews to perform relay work. (Hearing transcript at 44:1-
12 45:23.) His dispatching duties are done primarily via personal computers. (Hearing
13 transcript at 44:24-45:1).

14
15 (c) The two gas utility clerks/dispatchers spend 25 to 30 percent of
16 their time performing dispatching duties by dispatching regulator men and meter
17 repairmen. (Hearing transcript at 53:11-56:11.)

18
19 (d) The construction services dispatcher uses the company's DPSS
20 system and the telephone to dispatch servicemen in response to work requests.
21 (Hearing transcript at 110:23-113:16.)

22
23 (e) The fleet dispatcher and the operations assistant (who both work
24 in Fleet Services) dispatch work to equipment operators and field mechanics.
25 (Hearing transcript at 117:11-25.)

26
27 (f) The two vehicle dispatchers in Fleet Management dispatch
28 company vehicles on the basis of work orders. (Hearing transcript at 120:2-122:1.)

1
2 Furthermore, the Petitioner essentially conceded that use of SDG&E's DPSS
3 system is not required to establish a significant community of interest with the C&O
4 dispatchers. For example, the district clerk in the Orange County Regional office only
5 performs dispatch duties on a fill-in basis for the C&O dispatchers, and this only entails 10
6 percent of her job duties. (Hearing transcript at 102:19-103:8.) Although the Petitioner
7 contends the district clerk is a dispatcher, the testimony established that the district clerk
8 does not perform any of the dispatch duties on the company's DPSS system; the district clerk
9 essentially responds to radio calls and telephone calls when the dispatchers are unavailable.
10 (Hearing transcript at 103:9-17.)
11

12 III.

13 ARGUMENT
14

15 It is well settled that in the public utility industry, the Board generally favors
16 system-wide units. See, e.g., Baltimore Gas & Electric Co., 206 NLRB 199, 201 (1973).
17 Here, the appropriate unit should include all of the company's dispatchers because they have
18 a significant community of interest as demonstrated by the parties' stipulation regarding the
19 applicable employees' pay grades, work schedules, benefits and personnel policies. The
20 C&O dispatchers and the ten additional employees identified by SDG&E have one other
21 common and crucial characteristic: they are all performing the duties of dispatchers!
22

23 There is a long line of Board decisions establishing the propriety of including
24 dispatchers in units with a much lesser community of interest than that found in the present
25 instance. See, e.g., A.P.R.A. Fuel Oil Buyers Group, Inc., 308 NLRB 480 (1992) (affirming
26 unit of drivers, servicemen, dispatchers and mechanics with two other employees who had
27 40 to 55 percent dispatch duties because they have substantial interest in wages, hours, and
28 other terms and conditions of employment); Northern Virginia Solid Waste Collection Dist.

1 of Browning Ferris, Inc., 275 NLRB No. 49 (1985) (affirming unit of dispatcher and drivers
2 because dispatcher enjoys benefits similar to those of other unit employees); Airkaman, Inc.,
3 230 NLRB 924 (1977) (affirming unit of airline refuellers, line service refuellers, and
4 dispatchers). In contrast, SDG&E seeks to include only dispatchers to the group of C&O
5 dispatchers. Based on the Board's past decisions, it is proper that a system-wide unit of
6 utility company dispatchers be identified as the appropriate unit.

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8 IV.

9 CONCLUSION
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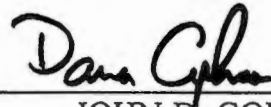
11 The Regional Director should have added the ten additional dispatchers
12 identified by SDG&E to the Petitioner's narrowly defined unit of C&O dispatchers. Besides
13 the obvious fact that all of the employees are dispatchers, the employees also share common
14 work schedules, pay scales and benefits. The fact that the additional ten dispatchers are
15 spread out among six different offices is of no impact here because the 18 employees already
16 deemed "appropriate" by the Regional Director are themselves spread among eight separate
17 offices. Moreover, the Board favors such system-wide units for utility companies. While
18 only one of these additional ten employees utilizes the same DPSS system used by the C&O
19 dispatchers, all the dispatchers use the radio or telephone to dispatch and the Petitioner has
20 conceded that the use of the DPSS system is not relevant to finding a substantial community
21 of interest (i.e., the Petitioner conceded contended that the district clerks were appropriate
22 for the unit despite the fact that they do not use DPSS).

1 For the reasons stated above, SDG&E respectfully requests that the Board
2 grant its Request for Review with respect to the ten additional employees that should be
3 included in the unit.

4
5 Dated: December 16, 1997

6
7 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

8
9 By



10 JOHN D. COLLINS
11 DAVID B. CHIDLAW
12 DANA CEPHAS

13
14 Attorneys for Employer
15 SAN DIEGO GAS AND ELECTRIC
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

SAN DIEGO GAS & ELECTRIC¹

Employer

and

Case 21-RC-19862

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
LOCAL 465, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was conducted before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The Employer's name appears as amended at the hearing.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All dispatchers, dispatch assistants, and district clerks employed by the Employer in its construction and operations districts, at the following facilities: Mountain Empire District, Pine Valley, California; Eastern District, El Cajon, California; Metro District, 701 33rd Street, San Diego, California; Beach Cities District, 4848 Santa Fe Street, San Diego, California; North Coast District, Carlsbad, California; Northeast District, Escondido, California; Orange County District, San Clemente, California; and the Ramona Satellite Office, Ramona, California; excluding all other employees, clerical employees, professional employees, guards and supervisors as defined in the Act.

The Employer is a utility company engaged in the business of providing gas and electrical services in San Diego and Orange Counties, California. The Employer operates from numerous facilities and its operations are broken down into numerous districts and departmental units. Certain of the Employer's employees are covered by collective-bargaining agreements, others are not.

The Petitioner seeks a unit consisting of all dispatchers, dispatch assistants, and district clerks who work in

- 3 -

the Employer's Construction and Operations districts ("C&O").² The Employer contends that the unit³ sought by the Petitioner is not appropriate for the purposes of collective bargaining because it does not include the following employees: two Gas utility clerks -- Gloria Hinz and Laura Zorrota -- who work at the Employer's Miramar facility; one crew dispatcher -- Jim Fruchae, one fleet dispatcher (name unknown), and one operations assistant (name unknown), all of whom work at the Employer's Kearny facility; two vehicle dispatchers -- Gloria Ortega and Tim _____⁴ who work at the Employer's Ash Street facility; three meter dispatch assistants: Diana Rolston, who works at Meter Service Metro; Tracy Hollingsworth, who works at Meter Service North; and Frances Evans, who works at the Beach Cities C&O District; and finally, Gwendolyn Murphy, who works out of the construction

² The Employer has seven C&O districts and one C&O satellite office; Mountain Empire-Pine Valley, California; Eastern-El Cajon, California; Metro-701 33rd Street, San Diego, California; Beach-4848 Santa Fe Street, San Diego, California; North Coast-Carlsbad, California; Northeast-Escondido, California; Orange County-San Clemente, California; and the Ramona Satellite Office-Ramona, California.

³ The parties stipulated that all of the dispatchers and dispatch assistants at the C&O districts, as well as certain of the district clerks, should be included in any unit found to be appropriate. This stipulation covers 11 dispatchers (names unknown), two dispatch assistants (names unknown), and four district clerks-Alice Baker, Dawn Cole, Bob Fox, and Gabrielle Villa. In its brief, the Employer attempts to back off from this stipulation by saying that, if the Employer's broadened unit is found not appropriate, the stipulated group may not be appropriate because it encompasses many different offices with many different supervisors. The Employer, however, has not withdrawn from the stipulation. The Employer has also presented no evidence regarding the supervision of the stipulated group. Accordingly, I find that these 17 employees in the agreed upon classifications shall be included in the Unit.

⁴ The record does not reveal Tim's last name. Hereinafter he is referred to simply as "Tim."

services department in the Century Park facility.⁵ The Employer also argues that two of the C&O district clerks--Joanne Bordon and Sharon Cardenas--should be excluded from the unit because they do not share a community of interest with the other dispatchers.

The C&O dispatchers and dispatch assistants ("C&O Dispatchers") are broken down into three categories: overhead dispatchers; underground dispatchers; and gas dispatchers. All three categories have similar duties and are cross-trained so that each can perform the other's duties.⁶ The C&O dispatchers' duties are also similar from district to district; little trouble would exist were a C&O dispatcher to work at a different district. The C&O dispatchers also interact among each other if work crews are sent to a different district. The C&O dispatchers are apparently supervised within their particular district in that they do not share common supervision.

The C&O dispatches receive work orders over the Employer's DPSS system, coordinate the necessary personnel and equipment resources, schedule the work, and keep records regarding the scheduled work. In coordinating the necessary resources, the C&O dispatchers sometimes interact with other dispatchers, including the Fleet dispatchers. The work crews are generally dispatched via the computerized DPSS system, with the

⁵ The parties agree that all of the employees in question are in pay grades 8-12, work a set schedule, have essentially the same benefits, and are subject to all of Employer's normal personnel policies.

⁶ Apparently, some C&O dispatchers perform more than one type of dispatching. Dispatcher Gloria Zuniga testified that she dispatched both overhead and underground crews.

work orders being entered into the system by either the C&O dispatchers or supervisors. However, the crews are sometimes dispatched by radio. C&O dispatcher Zuniga testified that she spends 25-30 percent of her day directly dispatching crews by radio.⁷

The C&O district clerks are essentially relief employees. They fill in for dispatchers or other clerical employees who are on vacation or otherwise indisposed. While filling in for dispatchers, they perform the same functions as the vacationing dispatcher. The district clerks spend anywhere between 10-50 percent of their time filling in for C&O dispatchers.

The Employer's two gas utility clerks ("gas clerks") work in the gas operations department and are supervised by Pipeline Services Supervisor Richard Lifer. Both gas clerks work at the Employer's Miramar facility. None of the C&O dispatchers work out of this facility.

Gas clerk Gloria Hinzo spends about 25 percent of her time dispatching pipeline operations crews. The remainder of her time is spend on routine clerical duties. She also assists in preparing a route sheet for the crews. Hinzo dispatches these crews by radio or telephone, not through the DPSS system. Hinzo does not take calls from any of the districts but occasionally talks with outside customers. She has no interaction with the C&O dispatchers. Hinzo is trained to backup the other gas clerk,

⁷ However, Metro C&O Manager Michael McNabb testified that C&O Dispatchers only spend about 10 percent of their time on the radio.

Laura Zorrota, but is not trained to perform any other dispatch functions, including those of the C&O dispatchers.

Gas Clerk Laura Zorrota dispatches crews who perform commercial meter sets. Zorrota receives orders for setting or updating field gas meter sets, then assigns the set to a crew. If the crew discovers a gas leak while doing a meter set, the crew could either have Hinzo or Zorrota call a C&O dispatcher or could call the C&O dispatcher themselves. However, the crews repair 99 percent of the leaks themselves; the last time a C&O dispatcher was contacted because of a leak was at some point less than 3 years ago.⁸ Other than this potential gas leak problem, Zorrota also does not interact with the C&O dispatchers.

Crew Dispatcher Jim Fruchae works at the Employer's Kearny facility. No C&O dispatchers work at this facility. Fruchae is supervised by Frank Johnson, the assistant protection maintenance section supervisor. This section is part of the Employer's electrical construction and maintenance department. Fruchae spends 60-70 percent of his time dispatching seven Kearney based relay crews; the remainder of his time is taken up by timekeeping responsibilities. Fruchae dispatches via a computer system unique to the Kearney facility; he does not use DPSS. The section foremen determine the composition of the crews then tell Fruchae which crews are available. The foremen often reschedule the crews after Fruchae schedules them. Fruchae does not interact with the C&O dispatchers. However, in emergency

⁸ Lifer could not pinpoint the time any more accurately than this.

occasions such as a storm, one of Fruchae's crews may be dispatched by a C&O dispatcher.'

Four dispatchers are supervised by Christopher Lyons, manager for fleet operations. Two of the dispatchers, the fleet dispatcher and the fleet operations assistant, work out of the Employer's Miramar facility. These two dispatchers receive orders from either the C&O dispatchers or C&O foremen for equipment and equipment operators. They then plan and assign the operators' work. They also dispatch field mechanics. Their dispatching is done via radio; they do not appear to use DPSS.

Lyons also supervises two vehicle dispatchers--Gloria Ortega and Tim. The vehicle dispatchers work at the Employer's Ash Street facility. No C&O dispatchers work at this facility. The vehicle dispatchers do not dispatch crews. They also have no interaction with the C&O dispatchers.

The Employer employs three dispatchers in its meter services department. Dispatch Assistant Diana Rolston works at the Employer's facility located at 6145 Mission Gorge Road, San Diego, California. No C&O dispatchers work at this facility. Rolston is supervised by Margaret Florence, supervisor of metro meter reading. Rolston's duties revolve around hand-held meter reading processors. She loads, maintains, and enters information into the processors. She does not schedule routes. However, she can reschedule routes in the event of illness or vacation, or if

' This has not happened for some time. Johnson testified it may have happened last year but definitely not this year. The last occurrence was apparently the subject of a union-filed grievance.

a regularly scheduled route was not completed the previous day. In performing her dispatch duties, Rolston uses two computer systems, CISCO and MERMS. Rolston does not normally interact with C&O dispatchers.

Dispatch Assistant Stacy Hollingsworth works out of the Employer's Northern Meter facility in San Dimas, California. No C&O dispatchers work out of this facility. She is supervised by Steve Krebs. Apparently, Hollingsworth performs the same duties as Rolston.¹⁰

Dispatch Assistant Frances Evans works from the Beach Cities district office. C&O dispatchers work at this facility. Evans is supervised by David Lowe, manager of Metro Meter Services. Evans dispatches four electricians who wire and set electrical meters in new construction. These four electricians work from the beach cities district, the eastern district in El Cajon, California, the northeast district in Escondido, California, and the north coast district in Carlsbad, California. C&O dispatchers work at all of these offices. In dispatching the electricians, Evans uses DPSS, another system called SORT, and a radio. Evans coordinates meter installation with the C&O dispatchers. Further, Evans used to work with the C&O dispatchers at the north coast district.¹¹

¹⁰ The only testimony presented regarding Hollingsworth was from Margaret Florence. She testified that Hollingsworth performs the same job as Rolston.

¹¹ Lowe believes, but does not know for sure, that Evans used to fill in for C&O Dispatchers from time to time when she worked at North Coast. Evans did not testify.

Dispatcher Gwendolyn Murphy works at the Employer's Century Park facility. No C&O dispatchers work at this facility. Murphy is supervised by Robert Vorrasso, manager of construction services. Murphy issues orders to servicemen for resets and re-lights. She also handles "Graffiti" orders and some tree-trimming orders. However, most tree-trimming orders go directly from the ordering district to the individual tree-trimming contractors, bypassing Murphy. Murphy does work with DPSS but interacts with the dC&O dispatchers rarely, if at all. She also does not interact with the other dispatchers described herein.

The primary issue here is whether the unit sought by the Petitioner is appropriate for collective bargaining. In making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine whether the unit sought is an appropriate unit. P.J. Dick Contracting, 290 NLRB 150 (1988). In so doing, the Board looks "first to the unit sought by the petitioner. If it is appropriate, [the] inquiry ends. If, however, it is inappropriate, the Board will scrutinize the Employer's proposals." Dezcon, Inc., 295 NLRB 109, 111 (1989).

In the present case, the Employer argues that the only appropriate unit must include those categories noted above, in addition to the categories noted in the petitioned-for unit, arguing essentially that the above-noted classifications of employees share such a strong community of interest with the unit employees so as to mandate their inclusion. In addition, the Employer avers that two unit employees should be excluded because

they do not share a community of interests with the unit employees.

Many considerations enter into a community of interest determination. The petitioner's desire for a unit, Marks Oxygen Co., 147 NLRB 228 (1964); the degree of functional integration, ACL Corp. d/b/a Atlanta Hilton & Towers, 273 NLRB 87 (1984); the nature of employee skills and functions, Phoenician, 308 NLRB 826 (1992); common supervision, Harron Communications, 308 NLRB 62 (1992)¹²; interchangability and contact among employees, Associated Milk Producers, 250 NLRB 1407 (1970); wages and fringe benefits, Allied Gear & Machine Co., 250 NLRB 679 (1980); and work situs, Kendall Co., 184 NLRB 847 (1970). All of these factors must be weighed when determining community of interest, no one factor can predominate. See, e.g., Brand Precision Services, 313 NLRB 657 (1994).

The Employer first argues that District Clerks Joanne Warden and Sharon Cardenas should be excluded because they lack a community of interest with the unit employees. McNabb testified that his district clerk spends about 50 percent of his time filling in for the dispatchers. However, Orange County C&O Manager James Valentine testified that his district clerk, Joanne Warden, only spends about 10 percent of her time dispatching. Further, eastern district C&O Manager Frederick Flihan testified that he has two district clerks, Alice Baker and Sharon Cardenas. Baker spends about 20 percent of her time dispatching; Cardenas

¹² Conversely, different supervision is not a per se basis for excluding employees from an appropriate unit. Texas Empire Pipeline Co., 88 NLRB 631 (1950).

spends about 15 percent of her time dispatching. The Employer has stipulated that Baker belongs in any appropriate unit but seeks to exclude both Warden and Cardenas. The only apparent basis for their proposed exclusion is that they spend a smaller amount of time dispatching. The difference between Baker's 10 percent and the 10-15 percent of Warden and Cardenas is negligible. Other than the amount of time spent dispatching, the Employer has not produced any evidence showing that Warden's and Cardenas' duties are any different from those of the other district clerks. Accordingly, I find that the Employer has failed to sustain its contention. I find that both Warden and Cardenas in fact share a community of interest with the unit employees, and accordingly, they shall be included in the unit.

Next, the Employer argues that the various noted categories of employees must be included in order to constitute an appropriate unit. The C&O dispatchers at issue in this case work in one department (Construction and Operations) and they work at eight separate district offices. They dispatch work crews by means of the DPSS system and radio. They are cross-trained and can perform any of the three different C&O dispatcher positions. The dispatcher duties are relatively similar from district to district; a C&O dispatcher from one district could work at another district with little training. The C&O dispatchers also regularly interact with each other. While the C&O dispatchers do not share common supervision, this fact does not preclude them from forming an appropriate unit. Texas Empire Pipeline, supra.

In the instant case, the facts clearly show that most of the additional employees the Employer seeks to add to the proposed unit do not share a community of interest with the C&O dispatchers. The other dispatchers which the Employer seeks to include, work in a variety of departments and at a variety of facilities. The only other dispatchers who interact with the C&O dispatchers are the fleet dispatcher, the fleet operations assistant, and Dispatch Assistant Evans. The dispatchers the Employer seeks to add also do not appear to interact with each other. Evans is also the only other dispatcher to share a common work situs with the C&O dispatchers. While the C&O dispatchers are crosstrained and can replace each other, none of the other dispatchers, save perhaps Evans, can perform the duties of the C&O dispatchers. The C&O dispatchers primarily dispatch via DPSS and radio. While most of the other dispatchers use the radio, the only other dispatchers to use DPSS are Evans and Murphy. All of the dispatchers at all of the facilities do have common benefits and earn similar wages. However, as set out above, wages and benefits are merely one factor to take into consideration among many other factors.

The record reveals that Dispatch Assistant Frances Evans works at the Beach Cities district office at which unit C&O dispatchers also perform work. The electricians dispatched by Evans also work out of district offices. Evans uses the same dispatching systems as the C&O Dispatchers. Gloria Zuniga testified that she interacts frequently with Evans; presumably, the other C&O dispatchers frequently interact with her as well.

Accordingly, based on the record as a whole, it is concluded that Dispatch Assistant Frances Evans shares a close community of interest with the unit employees such that she must be included in the appropriate bargaining unit. With regard to the other categories of employees which the Employer seeks to include in the unit, the Employer has failed to establish that they share such a close community of interest with the unit employees to mandate their inclusion. Accordingly, the Employer's contention is rejected. Based on the record as a whole, I conclude that the petitioned for unit, as modified above, is an appropriate unit for collective bargaining.

There are approximately 20 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have

quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the International Brotherhood of Electrical Workers, Local 495, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters at each of the Employer's facilities noted in the appropriate unit, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, on or

before December 10, 1997. No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.



Thursday, December 11, 1997

Stephanie Cahn, Field Attorney
National Labor Relations Board, Region 21
888 South Figueroa Street, 9th Floor
Los Angeles, CA 90017-5449

VIA FACSIMILE AND FIRST CLASS MAIL

Re: Case No. 21-RC-19862

Dear Ms. Cahn:

In response to your letter of December 9, 1997, regarding the above-referenced case, it is the Petitioner's position that a mail ballot would be preferable to a manual ballot procedure, given the logistics of the eight locations involved.

Additionally, as per your request, the Petitioner has outlined two alternate sequences of a possible manual election.

1. From the Los Angeles Regional Office:

1 1/2 hours travel time



Start at Orange County District (San Clemente, CA).



40 minutes travel time



North Coast District (Carlsbad, CA)



30 minutes travel time



Northeast District (Escondido, CA)



30 minutes travel time

↓
Ramona Satellite Office (Ramona, CA)
↓
1 hour travel time
↓
Mountain Empire District (Pine Valley, CA)
↓
20 minutes travel time
↓
Eastern District (El Cajon, CA)
↓
30 minutes travel time
↓
Metro District (San Diego, CA)
↓
15 minutes travel time
↓
Beach Cities District (San Diego, CA)

2. Starting from San Diego Resident Office:

Start at Beach Cities District (San Diego, CA)
↓
15 minutes travel time
↓
Metro District (San Diego, CA)
↓
20 minutes travel time
↓
Eastern District (El Cajon, CA)
↓
15 minutes travel time
↓
Mountain Empire District (Pine Valley, CA)
↓
1 hour travel time
↓
Ramona Satellite Office (Ramona, CA)
↓
30 minutes travel time
↓
Northeast District (Escondido, CA)

↓

30 minutes travel time

↓

North Coast District (Carlsbad, CA)

↓

40 minutes travel time

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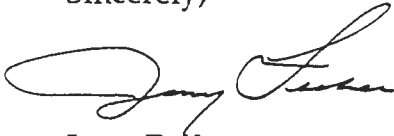
Orange County District (San Clemente, CA)

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Approximately 1 1/2 hours to return to downtown San Diego.

Both of these routes entail approximately 3 hours and 45 minutes of travel time between each of the Districts, not including travel time to and from the NLRB offices. As stated before, the Petitioner prefers a mail ballot because of the logistical difficulties involved in a manual ballot election. Should you require any additional information, please give me a call. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Fecher". The signature is fluid and cursive, with a large loop at the beginning and a trailing flourish.

Jerry Fecher
Business Representative

cc: David B. Chidlaw, Attorney-at-Law